TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 156.

CHARLES L. WEDDING AND LOUIS V. AYLESWORTH, PLAINTIFFS IN ERROR,

vs.

ROMAINE JEROME MEYLERT.

IN ERROR TO THE [illegible] CIRCUIT COURT OF THE [illegible] DISTRICT OF [illegible].

[illegible]

(FILED [illegible])

(18,657.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 125.

CHARLES L. WEDDING AND LOUIS I. AHLERING, PLAINTIFFS IN ERROR,

vs.

ROMANZA JEROME MEYLER.

IN ERROR TO THE WARREN CIRCUIT COURT OF THE STATE OF KENTUCKY.

INDEX.

	Original.	Print.
Caption	1	1
Petition	1	1
Exhibit "R"—Record from superior court of Vanderburg county, Indiana, in Wedding *et al. vs.* Meyler	3	2
Summons	7	3
Order filing answer	8	4
Answer	8	4
Order filing amended petition	10	5
Note as to amended petition	10	5
Order calling special December term of court	11	5
Order filing amended petition	12	6
Order continuing	12	6
Order filing motion to strike out of answer	13	6
Motion to strike out of answer	13	6

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 1, 1903.

	Original.	Print
Order submitting on motion	14	7
Order sustaining motion and filing reply	14	7
Reply	15	7
Order substituting amended petition	16	8
Substituted amended petition	16	8
Exhibit "R R"—Record from superior court of Vanderburg county, Indiana, in case of Wedding *et al.* *vs.* Meyler	17	8
Ordering filing amended petition	26	13
Order filing amended answer	26	13
Amended answer	27	14
Motion to strike out of amended answer	30	15
Order sustaining motion to strike out	31	16
Order entering motion to transfer to equity	32	16
Motion to transfer to equity	32	16
Order filing reply to amended answer	33	17
Reply to amended answer	33	17
Order submitting on motion to transfer	35	18
Order overruling motion to transfer	35	18
Order entering motion to continue	36	18
Motion to continue and retake depositions	36	18
Order sustaining motion to continue	37	19
Order filing rejoinder	37	19
Rejoinder	38	19
Verdict	39	20
Order entering motion by plaintiff for a judgment *non obstante*	41	21
Judgment	41	21
Order filing motion and grounds for new trial	42	21
Motion and grounds for new trial	42	22
Order overruling motion for new trial	44	22
Order tendering and filing bill of exceptions	45	23
Bill of exceptions	45	23
Testimony of Louis I. Ahlering	46	24
Henry R. Scott	53	27
J. E. Williamson	56	28
Indiana statutes and constitution	61	31
R. J. Meyler	65	32
Porter McKay	71	35
Judgment	73	36
Motion and grounds for new trial	74	37
Judge's certificate to bill of exceptions	75	37
Supersedeas bond	76	38
Supersedeas	77	39
Ordering reinstating upon docket	79	39
Order tendering mandate of court of appeals	79	40
Mandate from court of appeals	79	40
Opinion of the court of appeals	80	40
Order continuing	95	48
Order for record	95	48
Order tendering bill of exceptions	96	48
Bill of exceptions	96	48

	Original.	Print
Order denying motion to file amended petition	97	49
Amended petition	97	49
Judge's certificate to bill of exceptions	100	50
Order allowing plaintiffs to give bond	100	50
Judgment	101	50
Order for record	103	52
Cerk's certificate to record	104	52
Judge's certificate to clerk's signature	105	52
Clerk's certificate to judge's signature	106	53
Writ of error (copy)	107	53
Bond upon writ of error	109	54
Clerk's certificate to record	111	55
Petition for writ of error	112	55
Assignment of errors	118	58
Writ of error	124	61
Citation	126	62
Proof of service of citation	127	63

1 Be it remembered that upon the trial of the cause now pending in the Warren circuit court in which Charles L. Wedding and Louis I. Ahlering are plaintiffs and Romana J. Meyler is defendant, that the following is a true, correct and complete transcript of the entire record of the proceedings had and held therein, as appears of record in the Warren circuit court.

Pleas Before the Hon. W. E. Settle, Judge.

The following is a copy of the petition filed in the office of the clerk of said court on the 19" day of October 1896:

Warren Circuit Court.

CHARLES L. WEDDING and LOUIS I. AHLERING, Plaintiffs,
vs.
ROMANA J. MEYLER, Defendant. } Pet. Ord.

The plaintiffs, Charles L. Wedding and Louis I. Ahlering, state they brought an action on the — day of —— 189- against
2 the defendant, Romana J. Meyler, in the superior court of Vanderburg county State of Indiana (held at Evansville in said State) the same being a court of record and of competent and general jurisdiction.

That said defendant, Romana J. Meyler, was duly summoned in said action and appeared by attorney and filed his answer therein

Plaintiffs state that a trial of said action was had before said court in Evansville in said county and State on the 5th day of October 1896 and the plaintiffs herein were awarded and recovered judgment against said Romana J. Meyler on said date for the sum of two hundred dollars and the costs of said suit.

Plaintiffs say that on said date, to-wit: the 5th day of October 1896 said court entered of record an order in said action in words as follows, to-wit: "Come now the plaintiffs and comes also the defendant by J. E. Williamson his attorney and this cause being submitted to the court for trial without the intervention of a jury and the court having heard the evidence and being fully advised in the premises finds for the plaintiffs and that there is due the plaintiffs from the defendant the sum of $200.00. It is therefore considered and adjudged by the court that the plaintiffs, Charles L. Wedding and Louis I. Ahlering, recover of and from the defendant, Romana J. Meyler, the sum of two hundred dollars and the cost of this suit." The costs of said suit in said superior court amounted to 6.15 and the costs of transcript to the sum of $12.25.

3 A true copy of the record of said action in said superior court at Evansville Indiana attested and certified according to the laws of the Congress of the United States and the laws of Kentucky is filed herewith as part hereof marked Exhibit "R."

Said sum of two hundred dollars and the costs aforesaid amounting to $8.40 are just, now due and remain wholly unpaid.

Wherefore the plaintiffs prays for a judgment against the defendant, R. J. Meyler, for the sum of two hundred dollars with 6% interest from Oct. 5th. 1896 until paid and the sum of $8.40 costs in this behalf expended and for all necessary and proper relief.

BYRON RENFREW AND
McQUOWN & RODES,
For Pl'ffs.

The following is a copy of the exhibit marked "R" filed with the foregoing petition:

STATE OF INDIANA, } ss:
Vanderburg County, }

In the Vanderburg Superior Court.

CHARLES L. WEDDING and LOUIS I. AHLERING
vs.
ROMONA J. MEYLER. } No. 8895.

4 Be it remembered that on the 5" day of October, 1896, the following proceedings were had in said cause in said court, to-wit:

CHARLES L. WEDDING, LOUIS I. AHLERING
vs.
ROMONA J. MEYLER. } No. 8895.

Come now the plaintiffs, comes also the defendant by J. E. Williamson, his attorney, and this cause being submitted to the court for trial without the intervention of a jury, and the court having heard the evidence and being fully advised in the premises finds for the plaintiffs, and that there is due the plaintiffs from the defendant the sum of two hundred dollars ($200).

It it therefore considered and adjudged by the court that the plaintiffs, Charles L. Wedding and Louis I. Ahlering, recover of and from the defendant, Romona J. Meyler, the sum of two hundred dollars, and the costs of this suit.

STATE OF INDIANA, } ss:
Vanderburg County, }

I, Charles Sihler, clerk of the Vanderburg superior court, is said county and State, do hereby certify that the foregoing is a true and correct copy of the judgment of said court made in said cause as the same appears of record in my office.

CHAS. SIHLER,
[SEAL.] *Clerk of the Vanderburg Superior Court.*

5 UNITED STATES OF AMERICA, }
State of Indiana, Vanderburg County, } ss:

I, John H. Foster, sole presiding judge of the superior court of Vanderburg county, State of Indiana, do hereby certify that Charles Sihler, whose name is subscribed to the foregoing certificate of attestation, now is, and was at the time of signing and sealing the same, the clerk of the superior court of Vanderburg county, aforesaid, and the keeper of the records and the seal thereof, duly elected and qualified to office, and that full faith and credit are, and of right ought to be given to all of his official acts as such in all the courts of record and elsewhere, and that his attestation is in due form of law and by the proper officer.

Given under my hand this 2d of December 1896.

JOHN H. FOSTER,
Judge of the Vanderburg Superior Court.

UNITED STATES OF AMERICA, }
State of Indiana, Vanderburg County, } ss:

6 I, Charles Sihler, clerk of the Vanderburg superior court in said State, do hereby certify that John H. Foster, whose genuine signature as sole presiding judge of the superior court of Vanderburg county, appears to the foregoing certificate, was at the time of making the same, and still is presiding judge of the superior court of Vanderburg county, and I further certify that said court is a court of record, duly authorized and organized by and under the constitution and laws of the State of Indiana, and that said certificate is in due form of law, and by the proper officer.

Witness my hand and seal of said court at Evansville Indiana, this 2d day of December 1896.

CHAS. SIHLER,
[SEAL.] *Clerk of the Superior Court of Vanderburg County.*

7 The following is a copy of the summons issued upon the foregoing petition:

The Commonwealth of Kentucky to the sheriff of Warren county, Greeting:

You are commanded to summon R. J. Meyler to answer on the first day of the next Nov. term of the Warren circuit court, a petition filed against him in said court by Chas. L. Wedding and Louis I. Ahlering and warn him that upon failure to answer, the petition will be taken for confessed, or he will be proceeded against for contempt; and you will make due return of this summons on the first day of the Nov. term of said court.

Witness, J. B. Stubbins, clerk of our said court, this 19th. day of Oct. 1896.

J. B. STUBBINS, *Clerk.*

The following is a copy of the return indorsed on said summons:

Executed on R. J. Meyler by delivering to him a copy of the within summons this Oct. the 19" 1896.

ROBERT RODES, JR., *S. W. C.*,
By L. F. WADDLE, *D. S.*

The following is a copy of an order entered in open court on the 25" day of November 1896, that being the 21" day of the November term of court:

8 Warren Circuit Court.

CHAS. L. WEDDING, &C., } Order.
vs.
R. J. MEYLER.

Came defendant and filed answer herein.

The following is a copy of the answer filed in open court on the 25" day of November 1896, that being the 21" day of the November term:

Warren Circuit Court.

C. L. WEDDING and LOUIS I. AHLERING, Plaintiffs, *against* R. J. MEYLER, Defendant. } Answer of R. J. Meyler.

For answer herein R. J. Meyler says he has no knowledge or information sufficient to form a belief whether the superior court of Vanderburg county, Indiana, (held at Evansville, Indiana) is or was a court of record and of competent or general jurisdiction and therefore denies that it had such jurisdiction, or appeared by attorney and filed *answer* his answer in said action and denies that he was ever summoned in such action, and if any appearance was entered therein by attorney or answer filed therein it was done without his knowledge or authority or consent and he was never
9 a resident of the State of Indiana but has always since his majority resided in Kentucky, and no service was ever had on him in the State of Indiana in the suit aforesaid.

And he denies that any legal or valid trial of said action was ever had before said court in Evansville on the 5" of Oct. 1896 or at any time, and denies that plaintiffs were awarded any valid or recorded judgment against him for two hundred dollars and costs of said suit or any sum and he denies that said court on the 5" day of Oct. 1896 entered of record any valid, legal or binding order in said action in the words as set out in the petition, and if any such order or judgment was entered as set out in the petition it was and is illegal and void and not binding on defendant, for said court had no jurisdiction over the subject matter therein and no jurisdiction over the person of the defendant therein. And he denies that a true or com-

plete copy of the record of said action in said superior court at Evansville, Indiana, attested and certified according to the law of the Congress of the United States and the law of Ky. is filed by plaintiffs as "Exhibit R." And he denies that said sum of two hundred dollars and costs $8.40 or any part thereof are, just, now due and unpaid, and denies that plaintiffs should have judgment for any sum whatever, and if any such judgment exists it is unjust, illegal and void and procured by plaintiffs by their fraud and misrepresentation.

And defendant says he was indebted to plaintiffs in the
10 sum of fifty dollars for legal services rendered by them in Indiana in a suit of Frank Tardy &c. against the steamer "The City of Clarksville" and he paid said sum to the plaintiffs on the — day of —— 1896 and he never did owe them any other sum on any score whatsoever, nor does he now owe them one cent and asks that the petition be dismissed with costs and for all proper relief.

R. J. MEYLER,
By WRIGHT & McELROY AND
SIMS & COVINGTON, *Att'ys.*

The following is a copy of an order entered in open court on the 5" day of December 1896, that being the 30" day of the November term:

Warren Circuit Court.

C. L. WEDDING, &c., *vs.* R. J. MEYLER. } Order.

Came plaintiff and filed amended petition herein.

The amended petition filed by the foregoing order was lost from the record and was substituted on the 27" day of February 1897, and the "Exhibit R. R." filed with said amended petition is copied herein immediately after said amended petition.

11 The following is a copy of an order entered in open court on the 5" day of December 1896, that being the 30" day of the November term:

The court being satisfied that it will be impossible to complete the business before it at the present term, deems it necessary and so orders that a special term of court be held to continue one week or longer, if necessary, in order that the business and work of the court left unfinished at the present term may be completed.

It is therefore ordered that a special term of the Warren circuit court be held for the transaction of civil business at the court house in Bowling Green, Warren county, Kentucky, beginning the third Monday in December 1896, (December 21" 1896) and that at said court all such steps as may be necessary and legal may be taken in the following cases, to-wit: (Then among many others follows:)

3102, C. L. Wedding, &c., *vs.* R. J. Meyler.

(And the order concludes as follows:)
Ordered that the foregoing causes be now continued.

The following is a copy of an order entered in open court on the 5" day of December 1896, that being the 30" day of the November term:

12 Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

Came plaintiff and filed amended petition herein.

The following is a copy of an order entered in open court on the 26" day of December 1896, that being the 6" day of the special called December term 1896:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

Ordered that the above styled cause be now continued.

The following is a copy of a motion entered in open court on the 17" day of February 1897, that being the 3" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

13 Comes plaintiff and moves the court to strike out certain portion of defendant's answer herein.

The following is a copy of the motion filed in open court on the 17" day of February 1897, that being the 3" day of the February term:

Warren Circuit Court.

CHARLES L. WEDDING, &c., vs. R. J. MEYLER }

Come the plaintiffs and move the court to strike from the defendant's answer filed herein all that portion on the last page thereof beginning with the words "and defendant says" and ending with the words "owe them one cent."

BYRON RENFREW AND
McQUOWN & RODES, *For Pl'ffs.*

The following is a copy of an order entered in open court on the 18" day of February 1897, that being the 4" day of the February term:

Warren Circuit Court.

14 C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

Ordered that this cause be now submitted upon plaintiffs' motion to strike from defendant's answer certain portions thereof.

The following is a copy of an order entered in open court on the 19" day of February 1897, that being the 5" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c. vs. R. J. MEYLER. }

The motion of the plaintiffs, Charles Wedding &c., to strike out that portion of defendant's answer herein beginning with the words "and defendant sayays" and ending with the words "owe them one cent" having been submitted to the court and the court being sufficiently *ordered*, adjudges that said motion be sustained and said words are hereby stricken out and plaintiffs given judgment for cost on said motion, to which judgment of the court defendant, R. J. Meyler, excepts.

Also came p-aintiffs and filed reply to defendant's answer herein.

15 The following is a copy of the reply filed herein in open court on the 19" day of February 1897, that being the 5" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Reply.

The plaintiffs, Chas. L. Wedding and Louis I. Ahlering, for reply to defendant's answer deny that in said action of Wedding & Ahlering against Meyler in the superior court of Vanderburg county, Indiana, if any appearance was entered by plaintiff by attorney or answer filed therein for him it was done without defendant's authority or knowledge or consent; and deny that no service of summons was had on defendant in the State of Indiana in the suit aforesaid. Plaintiffs deny that said court had no jurisdiction over the subject matter therein or the person of the defendant and deny

that said judgment was procured by the plaintiffs' fraud or their misrepresentation.

Wherefore they pray as in their petition and for all proper relief.

BYRON RENFREW.
McQUOWN & RODES.

16 The following is a copy of an order entered in open court on the 23" day of February 1897, that being the 5" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

It appearing that plaintiffs' amended petition has been lost from the papers of this suit by which they filed as part thereof an exhibit as the true copy of the record of the suit in which was rendered the judgment sued on and that only the said exhibit remained and plaintiffs having offered to file a reproduction of said amended petition by consent of parties it is now ordered that said amended petition as reproduced be and the same is now filed.

The following is a copy of the substituted amended petition filed in open court on the 23" day of February 1897, that being the 5" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Amended Pet.

17 The plaintiffs, C. L. Wedding &c., state that they were mistaken when they filed their original petition when they stated that they filed a true copy of the record of the action of Wedding &c. *vs.* Meyler in the superior court of Vanderburg county at Evansville, Ind., for they say said record was only a copy of the judgment rendered therein. Plaintiffs now file and make a part hereof a complete and true copy of the record of said suit in the said superior court of Vanderburg county, Indiana, of Wedding &c. *vs.* Meyler as "Exhibit R R" and pray as in their original petition, &c.

RENFREW AND
McQUOWN & RODES.

The following is a copy of "Exhibit R R" filed with the foregoing amended petition and filed in open court on the 5" day of December 1896:

STATE OF INDIANA, *Vanderburg County*, } ss:

In the Vanderburg Superior Court.

CHARLES L. WEDDING and LOUIS I. AHLERING
vs.
ROMONA J. MEYLER. } No. 8895.

Be it remembered that on the 27th day of May, 1896, the plaintiffs filed in the office of the clerk of said court their complaint, which is in words and figures as follows, to-wit:

18 In the Superior Court of Vanderburg County, June Term, 1896.

CHARLES L. WEDDING, LOUIS I. AHLERING
vs.
ROMOZA J. MEYLER.

The plaintiffs complain of the defendant and say that said defendant is indebted to them for legal services rendered said defendant, at his special instance, and request, in the sum of two hundred dollars; a bill of particulars of which is filed herewith marked Exhibit A, and made a part hereof; that said sum is now due, and wholly unpaid.

Wherefore plaintiffs ask judgment against said defendant for two hundred dollars and all other proper relief.

CHARLES L. WEDDING,
LOUIS I. AHLERING,
Att'ys for Plaintiffs.

(EXHIBIT A.)

Romoza J. Meyler to Charles L. Wedding and Louis I. Ahlering, Dr.

To legal services rendered in the case of "The City of Clarksville" in the United States court for the district of Indiana	$250.00
By cash	50.00
Balance due	$200.00

19 Indorsed as follows: No. 8895. Superior court. Charles L. Wedding, Louis I. Ahlering *vs.* Romoza J. Meyler. Complaint:—The clerk will fix in the summons Monday June 8th, 1896, as the day on which the defendant shall appear. Vanderburg county:—Filed May 27th, 1896. Chas. F. Boepple, clerk.

Be it further remembered that afterwards, to-wit: on the same day, the clerk of said court issued his summons, which, with the return endorsed thereon is in words and figures following, to-wit:

The State of Indiana to the sheriff of Vanderburg county, Greeting:

You are hereby commanded to summon, Romaza J. Meyler to appear in the superior court of Vanderburg county, before the judge thereof, on the 8th, day of June 1896, at the superior court room in Evansville, to answer the complaint of Chas. L. Wedding *et al.* and of this writ make due return.

Witness, the clerk of said court and seal thereof hereunto affixed at Evansville, this 27 day of May 1896.

CHAS. F. BOEPPLE, *Clerk*,
By F. M. SANDERS.

Indorsed as follows: Came to hand May 27, 1896.

This summons was served on the within named Romoza J.
20 Meyler by reading and by delivering to the said Romoza J. Meyler a a true and correct copy of this writ.
May 27, 1896.

CHAS. G. COVERT, *Sheriff*,
By HENRY R. SCOTT, *Deputy*.

CHAS. L. WEDDING ET AL.
vs.
ROMOZA J. MEYLER. } No. 8895.

Summons superior court to June term, 1896 to June 8th. 1896.

WEDDING & AHLERING,
Attorney- for Plaintiff-.

Be it further remembered that afterwards, to-wit: on the 8th day of June, 1896, the following proceedings were had in said cause in said court, to-wit:

CHARLES L. WEDDING ET AL.
vs.
ROMOZA J. MEYLER.

Comes now the defendant by attorney and files his motion to quash the summons herein, and on motion of plaintiffs it is ordered by the court that the defendant file his answer herein, by Monday June 15, 1896.

Said motion so filed by the defendant is in the words and figures following, to-wit:

In the Superior Court of Vanderburg County, June Term, 1896.

21 CHARLES L. WEDDING ET AL.
vs.
ROMONA MEYLER.

The defendant Romanza J. Meyler enters his speciall appearance in this case and moves the court to quash the summons, because

such summons does not properly state his Christian name, that he was served with said summons under and by the name of Romona Meyler when his true name is Romanza.

J. E. WILLIAMSON,
Att'y for Def.

No. 8895 In the superior court June term 1896. Charles L. Wedding *vs.* Romona J. Meyler Motion to quash summons. Superior court of Vanderburg county. Filed June 8th, 1896. Chas. F. Boepple, clerk. J. E. Williamson def's att'y.

Be it further remembered that afterwards, to-wit, on the 15th. day of June, 1896, the following proceedings were had in said cause in said court, to-wit:

22 CHARLES L. WEDDING ET AL. *vs.* ROMONA J. MEYLER.

Comes now the defendant by attorney and files his answer herein, in two paragraphs.

Said answer, in two paragraphs is in the words and figures following, to-wit:

In the Superior Court of Vanderburg County.

CHARLES L. WEDDING ET AL. *vs.* ROMANZA J. MEYLER. } No. 8895.

1.

The defendant for answer to the plaintiff's complaint says he denies each and every allegation thereof.

2.

For further answer defendant says that before bringing of this action defendant paid the plaintiffs all sums of money due and owing by him to either of them.

J. E. WILLIAMSON,
Att'y for Def.

Endorsed on the back thereof is the following:

No. 8895. Wedding *et al. vs.* Meyler. Answer. Superior court of Vanderburg county, Filed June 15, 1896, Charles F. Boepple, clerk. J. E. Williamson, att'y for def't.

Be it further remembered that afterwards, to-wit on the 16th. day of September, 1896, the following proceedings were had in said cause in said court, to-wit:

23 CHARLES L. WEDDING ET AL.
vs.
ROMONA J. MEYLER.

Come now the parties by counsel and this cause is set for hearing and trial on the 5th. day of October.

Be it further remembered that afterwards, to-wit, on the 5th. day of October, 1896, the following proceedings were had in said court in said cause, to-wit:

CHARLES L. WEDDING, LOUIS I. AHLERING
vs.
ROMONA J. MEYLER.

Come now the plaintiffs. comes also the defendant by J. E. Williamson, his attorney, and this cause being submitted to the court for trial without the intervention of a jury, and the court having heard the evidence and being fully advised in the premises finds for the plaintiffs, and that there is due the plaintiffs from the defendant the sum of two hundred dollars. ($200.)

It is therefore considered and adjudged by the court that the plaintiffs, Charles L. Wedding and Louis I. Ahlering, recover of and from the defendant, Romona J. Meyler, the sum of two hundred dollars, and the costs of this suit.

STATE OF INDIANA, } ss:
Vanderburg County, }

I. Charles Sihler, clerk of the Vanderburg superior court, in said county and State, do hereby certify that the foregoing is a full,
24 true and complete copy of the complaint, summons and the return of the sheriff endorsed thereon, orders, answers, motions, and all the entries, orders and proceedings of said court made in said cause, as the same appear of record in my office.

[SEAL.]

CHAS. SIHLER,
Clerk Vanderburg Superior Court.

UNITED STATES OF AMERICA, } ss:
State of Indiana, Vanderburg County, }

I, John H. Foster, sole presiding judge of the superior court of Vanderburg county, State of Indiana, do hereby certify that Charles Sihler, whose name is subscribed to the foregoing certificate of attestation, now is, and was at the time of signing and sealing the same, the clerk of the superior court of Vanderburg county, aforesaid, and the keeper of the records and the seal thereof, duly elected and qualified to office, and full faith and credit are, and of right ought to be given to all of his official acts as such in all courts of record and elsewhere, and that his attestation is in due form of law and by the proper officer.

Given under my hand this 2d. day of December 1896.

JOHN H. FOSTER,
Judge of the Vanderburg Superior Court.

25 UNITED STATES OF AMERICA, } ss:
State of Indiana, Vanderburg County, }

I, Charles Sihler, clerk of the Vanderburg superior — in said State, do hereby certify that John H. Foster, whose genuine signature as sole presiding judge of the superior court of Vanderburg county, appears to the foregoing certificate, was at the time of making the same, and still is presiding judge of the superior court of Vanderburg county, and I further certify that said court is a court of record, duly authorized and organized by and under the constitution and laws of the State of Indiana, and that said certificate is in due form of law and by the proper officer.

Witness my hand and seal of said court at Evansville, Indiana, this 2d. day of December, 1896.

[SEAL.]

CHAS. SIHLER,
Clerk of the Superior Court of Vanderburg County.

The following is a copy of an order entered in open court on the 23" day of February 1897, that being the 8th. day of the February term:

26 Warren Circuit Court.

C. L. WEDDING, &c., } Order.
vs.
R. J. MEYLER. }

This day came plaintiff and filed amended petition herein

The following is a copy of an order entered in open court on the 23" day of February 1897, that being the 8" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., } Order.
vs.
R. J. MEYLER. }

This day came defendant and offered an amended answer and answer to amended petition, to the filing of which the plaintiffs except, but the court ordered said amended answer and answer to amended petition to be filed to which order plaintiffs except.

The following is a copy of the amended answer and answer to amended petition filed in open court on the 23" day of Feb-
27 ruary, 1897, that being the 8" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Amended Answer and Answer to Amended Petition.

Defendant, R. J. Meyler, denies that a true or complete copy of the record of the action referred to in the petition or amended petition as Exhibit "R R" in said superior court at Evansville, Ind., is filed and is attested and certified according to the laws of the Congress of the U. S. S. or the laws of Kentucky and as amendment to his original answer he says he admits that the sheriff of Vanderburg county, Indiana, did on the 27th. day of May 1896 hand him a copy of the summons of said court directing him to appear in the action mentioned in the petition and before the judge thereof on or before the 8" of June 1896 and answer a complaint of plaintiffs, but said summons was handed defendant while he and said sheriff were both in the county of Henderson, State of Kentucky, and out of the territorial limits of Indiana or Vanderburg county and said sheriff had no authority to serve the same and said service is void and was well known to have been illegal and void by the plaintiffs when they caused the same to be served, and in order to deceive the court in said action the said sheriff at the instance and direc-
28 tion of plaintiffs did make a return on said summons in these words "Come to hand May 27th. 1896. This summons was served on the within named Romanza J. Meyler by reading and by delivering to the said R. J. Meyler a true and correct copy of this writ May 27th. 1896. Chas. G. Covert sheriff by Henry R. Scott deputy" without stating where the same was served on this defendant and said return was fraudulent and void deceptive and did not state the truth as to where it was served and the execution and return as aforesaid were procured by plaintiffs to improperly, falsely and fraudulently get or apparently get defendant before said court so that they might have his appearance entered therein by rule or order of said court and by answer of one J. E. Williamson with whom defendant had advised as to said process but to whom defendant had never given any right or authority to enter his appearance therein by answer or otherwise or to defend said action in any way, and to continue and complete their said object said plaintiffs did on the 8th. day of June 1896 appear in said court and cause to be made and entered in said action an order in these words, to-wit: "And on motion of plaintiffs it is ordered by the court that the defendant file his answer herein by Monday, June 15th. 1896," which order was illegal, fraudulent and void and did cause and induce said Williamson to enter defendant's appearance in said action by answer to the merits therein when he had no right or authority so to do,
29 and said return on said summons was a deception and fraud also on the judge of said court by which he was led to believe and did believe that said service was made within the territorial jurisdiction of the State of Indiana and county of Vanderburg,

and the procurement of said answer to be made and filed by said Williamson was fraudulent and void and the answer itself illegal and void and had defendant been properly before said court he would never have made such defense as said answer recites for he did have and now has a good and valid defense to said action on its merits and one upon which he can be successful if by the court he is allowed to plead the same herein and he never had a fair and just opportunity to defend on the merits of said action, and he says that each and every order, steps, proceedings, pleadings and judgment entered or made in said action is and ought by this court to be held illegal, fraudulent and void and so procured by plaintiffs. And he further says he was not present nor in the State of Indiana when any order was made or step taken therein or pleading filed therein, never saw said case or any paper or pleading or order therein and was never in said court from the beginning of said action May 27th. 1896 till long after October 5th. 1896 and never was present at a trial of any issue therein and never knew of any step or pleading or judgment or trial therein and never authorized any one to try the same or plead therein, and now repeats
30 each and every allegation of his original answer and prays as therein set forth. Prays that plaintiffs' petition be dismissed and for all proper relief.

SIMS & COVINGTON.
WRIGHT & McELROY,
Att'ys for Def't.

R. J. Meyler says that the statements of the foregoing pleadings are true to the best of his knowledge and belief.

R. J. MEYLER.

Sworn to before me this February 23" 1897.

J. B. STUBBINS, *C. W. C. C.*,
By R. P. BARCLAY, *D. C.*

The following is a copy of a motion found in and with the papers herein:

Warren Circuit Court.

C. L. WEDDING, &c., } Motion to Strike Out.
vs.
R. J. MEYLER. }

Come the plaintiffs and move to strike from defendant's amended answer all that portion from the words "and was well known
31 to have been illegal" on the first page thereof down through the words "fraudulent and void and so procured by plaintiff" on the last page thereof.

RENFREW.
McQUOWN & RODES.

The following is a copy of an order entered in open court on the 25″ day of February 1897, that being the 10″ day of the February term :

Warren Circuit Court.

C. L. WEDDING, &c., } Order.
vs.
R. J. MEYLER. }

This cause having been submitt upon motion to strike out a certain portion of defendant's amended answer and the court being advised adjudges that said motion be and the same is now sustained and there is now stricken from defendant's said answer all that portion beginning with the words " and was well known to have been illegal " on the first page thereof and ending with the words " fraudulent and void and so procured by plaintiff " on the last page thereof, to which ruling of the court the defendant excepts.

32 The following is a copy of an order entered in open court on the 26″ day of February 1897, that being the 11″ day of the February term :

Warren Circuit Court.

C. L. WEDDING, &c., } Order.
vs.
R. J. MEYLER. }

Came the plaintiff and moved the court to transfer this cause to the equity docket.

The following is a copy of the motion filed in open court on the 26″ day of February 1897, that being the 11″ day of the February term :

Warren Circuit Court.

C. L. WEDDING, &c., } Motion.
vs.
R. J. MEYLER. }

Come the plaintiffs and move to transfer this cause to the equity docket of this court.

RENFREW.
McQUOWN & RODES.

33 The following is a copy of an order entered in open court on the 26″ day of February 1897, that being the 11″ day of the February term :

Warren Circuit Court.

C. L. WEDDING, &C., vs. R. J. MEYLER. } Order.

Came plaintiffs and filed reply herein.

The following is a copy of the reply to the amended answer filed in open court on the 26" day of February 1897 that being the 11" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &C., vs. R. J. MEYLER. } Reply to Amended Answer.

For reply to defendant's amended answer, plaintiffs deny that the summons in the above styled cause was handed to or served on defendant, while he or the sheriff executing said summons were both or either of them in the county of Henderson, or State of Kentucky, or out of the territorial limits of the State of Indiana, or Van-
34 derburg county, or that said sheriff had no authority to serve said summons, or that said service is void. Plaintiffs further deny that defendant was not present or in the State of Indiana when any order was made, or step taken therein or pleading filed in said suit, or that he never saw said case or any paper, or pleading or order therein or was never in said court from the beginning of said action, till after Oct. 5th. 1896 or that defendant was never present at a trial of any issue in said suit, or that he never knew of any steps, or pleading, or judgment, or trial therein or that he never authorized any one to try said action.

For further reply plaintiffs state that when said summons was served upon defendant he was on board a steamboat, resting in the Ohio river and anchored at and attached to the shore and wharf at Evansville, Indiana, and was at the time within the limits of the State of Indiana and subject to service of its process and to the jurisdiction of its courts,

Wherefore plaintiffs pray as in their petition and for all proper relief.

RENFREW,
McQ. & RODES.

35 The following is a copy of an order entered in open court on the 9" day of March 1897, that being the 20" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

Ordered that this cause be now submitted on plaintiffs' motion to transfer to equity.

The following is a copy of an order entered in open court on the 9" day of March 1897, that being the 20" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

This cause coming up on motion to transfer this case to the equity docket and the court being sufficiently advised adjudges that said motion be overruled to which judgment of the court plaintiffs. except.

36 The following is a copy of an order entered in open court on the 9" day of March 1897, that being the 20" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

Came plaintiffs and moved the court to be allowed to continue this cause with leave to retake the depositions of J. E. Williamson and Louis I. Ahlering.

The following is a copy of a motion entered in open court on the 9" day of March 1897, that being the 20" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Motion.

Motion on the part of plaintiffs to continue and retake the depositions of J. E. Williamson and Louis I. Ahlering.

37 The following is a copy of an order entered in open court on the 11" day of March 1897, that being the 22" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

This cause coming up on plaintiffs' motion to continue and the court being sufficiently advised adjudges that said motion be sustained with leave on the part of plaintiffs to retake the depositions of J. E. Williamson and Louis I. Ahlering.

The following is a copy of an order entered in open court on the 18" day of May 1897, that being the 2" day of the May term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

Came defendant, R. J. Meyler, and filed rejoinder to the reply of plaintiffs heretofore filed herein.

38 The following is a copy of the rejoinder filed in open court on the 18" day of May 1897, that being the 2" day of the May term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Rejoinder.

The defendant, R. J. Meyler, for rejoinder to plaintiffs' reply filed herein says that it is true that the summons named by plaintiffs was served upon him when he was aboard a steamboat but denies that said steamboat was at the time of said service resting in the Ohio river and anchored at or attached to the shore at the wharf at Evansville, Indiana. He denies that at the time said summons was served the defendant was within the limits of the State of Indiana, or that he was subject to service of its process or to the jurisdiction of the Indiana courts or any court of Indiana. But said alleged service of said summons was made on him while he was in Henderson county, Kentucky, as stated in the answer.

Wherefore he prays as in his answer.

SIMS & COVINGTON.
WRIGHT & McELROY.

39 The following is a copy of an order entered in open court on the 21" day of May 1897, that being the 5" day of the May term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

This day came the parties and the issue being joined, thereupon came the following jury, to-wit: W. K. Barre, R. F. Taylor, L. C. B. Hodges, Wm. Heard, J. A. Reynolds, J. A. Robinson, J. W. Graham, Rufus King, Jasper C. Kirby, J. E. Jenkins, C. A. Gossam and G. W. Beckham, who were sworn to well and truly try &c.

At the conclusion of the testimony the court propounded to the jury the following questions, to-wit:

Question 1. When the summons in this case was served upon the defendant Myler on the Ohio river, was said Myler on the Indiana or Kentucky side of the low water mark where it touches the Indiana shore?

No. 2. Did the defendant Myler authorize J. E. Williamson to represent him as his attorney for any purpose in the superior court of Vanderburg county Indiana in the suit of Wedding &c. against R. J. Myler, if so what was the nature and extent of the authority thus given?

The jury having heard the argument of counsel upon these questions retired to their room to consider of their answers and afterwards returned into open court the following answers:

Answer to question 1. On the Kentucky side of the low water mark.

Answer to question 2. We do not believe R. J. Meyler authorize J. E. Williamson to represent him as his attorney.

C. A. GOSSAM.
A. REYNOLDS.
J. E. JENKINS.
J. W. GRAHAM.
JOHN A. ROBINSON.
W. K. BARRE.
G. M. BECKHAM.
W. K. HEARD.
JASPER C. KIRBY.

No judgment is now rendered herein, the court reserving the same for further consideration.

The following is a copy of an order entered in open court on the 24" day of May 1897, that being the 7" day of the May term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

41 Came plaintiffs and moved the court for a judgment notwithstanding the verdict.

The following is a copy of the judgment entered in open court on the 11" day of June 1897, that being the 23" day of the May term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Judgment.

This cause having been submitted to the court, upon the motion of the plaintiffs for judgment against the defendant, R. J. Meyler, notwithstanding the verdict of the jury herein heretofore rendered and the court being sufficiently advised adjudges that said motion be and the same is hereby sustained. It is therefore adjudged by the court that the plaintiffs, Charles L. Wedding and Louis I. Ahlering, recover of the defendant, R. J. Meyler, the sum of two hundred dollars with 6 % interest from Oct 5th. 1896 until paid and the further sum of $8.40 costs in the Vanderburg superior court of Vanderburg county State of Indiana and also their costs in this cause expended. To which judgment of the court the defendant,
42 R. J. Meyler, excepts and prays an appeal to the court of appeals, which is granted.

The following is a copy of an order entered in open court on the 11" day of June 1897, that being the 23" day of the May term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

Came defendant, R. J. Meyler, by his attorneys, and moved the court to grant him a new trial herein and filed grounds in support of same.

The following is a copy of the motion and grounds for a new trial filed in open court on the 11" day of June 1897, that being the 23" day of the May term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Motion and Grounds for New Trial.

43 This day comes defendant, R. J. Meyler, and moves the court to set aside the judgment rendered herein on this day by the court, which judgment was rendered in favor of the plaintiffs and against this defendant, notwithstanding the verdict of the jury returned herein, and for grounds says: That the court erred in not rendering a judgment in favor of this defendant upon the verdict of the jury, and the court erred in rendering judgment against this defendant in favor of plaintiffs notwithstanding the fact that defendant was entitled to a judgment against plaintiff upon said verdict of the jury, and the verdict is referred to and made a part hereof.

The court erred in holding and adjudging that the law in this case was for the plaintiffs and that they were entitled to judgment against this defendant when the fact existed and was established by the said verdi-t of the jury that the judgment upon which this suit was brought, rendered against defendant by the superior court of Vanderburg county, Ind., was based upon and rendered upon service of summons on this defendant by the sheriff of Vanderburg county, Ind., when this defendant was a citizen of Warren county, Ky., and was at the time of the service of said summons upon him not in the said county of Vanderburg, State of Indiana, but was within the county of Henderson, State of Kentucky, and never thereafter entered his appearance to said suit and the said judgment of the said superior court is for that reason void, and

44 the said court had no jurisdiction of this defendant.

Wherefore, defendant prays that said judgment rendered herein against him on said verdict be set aside and held for naught and that he be granted a new trial and judgment be rendered for him against plaintiffs and prays for all proper relief.

WRIGHT & McELROY,
SIMS & COVINGTON,
Attorneys for Defendant.

The following is a copy of an order entered in open court on the 19″ day of June 1897, that being the 30″ day of the May term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

This cause having been submitted upon the motion and grounds filed by the defendant for a new trial and the court being advised

adjudges that said motion be overruled; to which ruling of the court the defendant excepts and prays an appeal to the court of appeals which is granted.

45 The following is a copy of an order entered in open court on the 19″ day of June 1897, that being the 30″ day of the May term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

This day came the defendant, R. J. Meyler, and produced and tendered his bill of exceptions and the same having been examined, approved and signed by the court, it is ordered that the same be signed, enrolled and spread upon the record, which is done accordingly.

The following is a copy of the bill of exceptions approved, signed and filed in open court on the 19″ day of June 1897, that being the 30″ day of the *N*ay term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Bill of Exceptions.

Be it remembered that in the trial of this action *action* the
46 plaintiffs moved the court to strike from defendant's answer all that portion on the last page thereof beginning with the words "And defendant says" and ending with the words "owe them one cent," which motion the court sustained and struck said words from defendant's answer, to which ruling of the court, defendant excepted at the time and still excepts. And thereafter plaintiffs moved to strike from defendant's amended answer all that portion beginning with the words "And was well known to have been illegal" on the first page thereof, and ending with the words "fraudulent and void and so procured by plaintiffs" on the last page thereof, which motion the court sustained, to which ruling of the court defendant excepted at the time and still excepts.

Be it further remembered that after the jury was empanelled and sworn to try the issue joined, the plaintiffs introduced the following evidence.

The deposition of Lewis I. Ahlering, taken on the 13th day of Feb'y 1897, which is in words and figures as follows:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Interrogatories.

Interrogatories to be propounded to Luis I. Ahlering, a witness for the plaintiff-, who will be found at # 117 Upper Fourth street, in Evansville, Ind.

47 Int. # 1. Please state your name, age, residence and occupation?

Int. 2. State if you are one of the plaintiffs to this action?

Int. 3. If you say you are one of the plaintiffs, state if you know, the def't, R. J. Meyler?

Int. 4. If you say you know the def't, please state if you had any conversation with him regarding the suit brought by you and your co-plaintiff, C. L. Wedding, against him in the, Vanderburg, superior, court of Indiana?

Int. 5. If you say you had such a conversation, please state what it was and all that occurred at the time?

Cross-interrogatory to Louis I. Ahlering.

Cross-int. 1. When, where and who were present when the conversation took place between you and R. J. Meyler, which you have detailed in answer to interrogatory No. 5

The deposition of Louis I. Ahlering, taken on the 13th day of February, 1897, at 117 Upper Fourth St., city of Evansville, Indiana, pursuant to interrogatories hereto annexed, to be read as evidence in an action between Charles L. Wedding and Louis I. Ahlering, plaintiffs, and R. J. Meyler, defendant, pending in the Warren
48 circuit court, State of Kentucky.

The said LOUIS I. AHLERING having been duly sworn, deposeth as follows:—

Answer 1. My name is Louis I. Ahlering, age 28 years, residence, Evansville, Indiana, occupation lawyer.

Answer 2. I am one of the plaintiffs to this action.

Answer 3. I know the defendant R. J. Meyler.

Answer 4. I did.

Answer 5. I said to Mr. R. J. Meyler, in that conversation, that the suit then pending against him in the superior court of Vanderburg county, brought by myself and Mr. Wedding for legal services was at issue, that Mr. Williamson had succeeded in getting a continuance of the case at the last term over the summer vacation, but now the summer vacation was over and we would immediately press the suit for trial and it would probably be impossible for him to get any further continuances, and asked him if *we* was not willing to settle the case without a trial, and that we were willing that any

lawyer should fix the amount we should have for our services that we sued for. Mr. Meyler said to me that Mr. Williamson was his attorney in the case, that he had not had an opportunity to discuss the matter with him; that Mr. Williamson was then out of
49 the city, but would return in a few days, that he, Meyler, would remain over and see Mr. Williamson regarding it and see what could be done. I heard nothing further from him.

Cross Interrogatories.

Answer 1. The conversation took place about the middle of September, 1896, in the law office of Messrs. Hornbrook & Wheeler. When I went into the offices of Hornbrook & Wheeler, Mr. Meyler, Mr. Wheeler and another gentleman, whom I did not know, were in the first room. After speaking to them, I asked Mr. Meyler to step into the other room and the conversation occurred there, no one being present but Mr. Meyler and myself.

LOUIS I. AHLERING.

Also read the deposition of Lewis I. Ahlering, taken on the 6th day of May, 1897, except answer to question # 7, which was not read.

Said deposition is in words and figures as follows:

The deposition of Louis I. Ahlering, taken on the 6th day of May, 1897, at 215 Upper Fourth street, city of Evansville, Indiana, pursuant to interrogatories hereto annexed, to be read as evidence in an action between Charles L. Wedding and Louis I. Ahlering, plaintiffs, and R. J. Meyler, defendant, pending in the Warren circuit court, State of Kentucky.

50 The said LOUIS I. AHLERING, having been duly sworn, deposeth as follows:

Answer 1. My name is Louis I. Ahlering, age 29 years, residence Evansville, Indiana, occupation lawyer. I am also station agent of the United States Weather Bureau at this point, which position I have held since the first day of May, 1894.

Answer 2. I am one of the plaintiffs in this action.

Answer 3. I know the defendant, R. J. Meyler.

Answer 4. I did have such a conversation referred to in the interrogatory.

Answer 5. It was about the middle of September, 1896, that I learned that Mr. Meyler was in this city, and I sought him in the office of Hornbrook & Wheeler, attorneys, in this city. He was then engaged in conversation with Mr. Wheeler and another gentleman, whom I did not know. I invited him into the other room as I desired to speak to him regarding the case then pending against him in which my co-plaintiff in this action, Mr. Wedding and myself, were plaintiffs. I told him that the issues in that case had

been made up and it was ready for trial, that we had attempted to get a trial of the cause during the last term before the sum-
51 mer vacation, but Mr. Williamson, his attorney, had succeeded in getting a continuance of it over the summer vacation, but that we should at once move to *to* have the case set down for trial, which would probably be done. The action was for attorney's fees for services rendered him in the United States court here, and I told him that we were willing to submit the matter to the arbitration of any reputable attorney in the city whom he might name. He told me in reply that Mr. Williamson, whom he had employed to look after the cause for him had not yet returned from his summer vacation, but that he had learned at Mr. Williamson's office that he would be back in a day or two. That he would remain in town until Mr. Williamson returned, and confer with him in regard to the matter. He said he hadn't had an opportunity up to that time to discuss the matter thoroughly with his lawyer but would do so, but until he had he didn't care to do anything in the matter. He was perfectly familiar with the matter and did not say anything regarding not having any knowledge of the case, but on the contrary, said that he had employed Mr. Williamson to look after the case for him.

Answer 6. Yes, I know the stage of the water in the Ohio river at Evansville on May 27th. 1896.

52 Answer 7. It is part of my official duties as station agent of the United States Weather Bureau at this place to read the river gauge daily, report it by telegraph, and keep an official record of the stages in books furnished for that purpose. I read the river gauge every morning before 8 a. m. and make a record of it. On May 27th. 1896, the stage of water in the Ohio river at Evansville, Ind., as appears by my official records, was 6 feet and 9 tenths above zero, which is more than 8 feet above low water mark.

LOUIS I. AHLERING.

The following is a copy of the interrogatories attached to the foregoing deposition:

Warren Circuit Court.

C. L. WEDDING, &c., } Interrogatories.
vs.
R. J. MEYLER. }

Interrogatories to be propounded to Louis I. Ahlering, a witness for the plaintiffs, who will be found at 215 Upper 4th St., Evansville, Ind.

Int. 1. Please state your name, age residence and occupation.

Int. 2. State if you are one of the plaintiffs to this action.

53 Int. 3. If you say you are one of the plaintiffs state if you know the defendant, R. J. Meyler.

Int. 4. If you say you know the defendant, R. J. Meyler, state if

you had any conversation with him regarding the suit brought by yourself and your co-plaintiff, C. L. Wedding, against him in the Vanderburg superior court of Indiana.

Int. 5. If you say you had such conversation please state what it was and all that occurred at that time.

Int. 6. Please state if you know the stage of water in the Ohio river on May 27th. 1897.

Int. 7. If you say you know the stage of the water in the Ohio river at the time mentioned please state how you know it and explain fully what it was on that day.

Plaintiffs next read the deposition of Henry R. Scott, which is in words and figures as follows:

Also the deposition of Henry R. Scott, taken at the same time and place, and pursuant to interrogatories hereto annexed, and for the same purposes mentioned in the foregoing deposition.

HENRY R. SCOTT being by me duly sworn, deposeth as follows:

Answer 1. My name is Henry R. Scott, age 27, residence Evansville, Indiana, occupation deputy sheriff of Vanderburg county, Indiana.

54 Answer 2. I hold the position of deputy sheriff of Vanderburg county, Indiana, and held such position on the 27th. day of May 1896.

Answer 3. On the 27th. day of May 1896, I served a summons on R. J. Meyler.

Answer 4. I served a summons on R. J. Meyler by reading and by delivering him a certified copy of the summons, on the 27th. day of May 1896, on a steamboat which was then tied to the wharf on the Indiana side of the Ohio river at Evansville, Vanderburg county, Indiana. It was a summons in an action in the superior court of Vanderburg county, Indiana, known as No. 8895, in which Charles L. Wedding and Louis I. Ahlering were plaintiffs and R. J. Meyler was defendant.

HENRY R. SCOTT.

The following is a copy of the interrogatories annexed to the foregoing deposition of Henry R. Scott:

Also interrogatories to be propounded to Henry R. Scott, a witness for the plaintiffs, who will be found at 215 Upper 4th St., Evansville, Indiana.

Int. 1. What is your name, age, residence and occupation?

Int. 2. Please state if you held any official position, and if you hold any such position on May 27th. 1896 and what that position is and was.

55 Int. 3. If you state in answer to interrogatory No. 1 that *that* you are a deputy sheriff and was such on May 27th, 1896, please state if you served any summons on R. J. Meyler.

Int. 4. If you say you served such summons, please state when and where you were when you served it and in what action it was, please state exactly about these matters.

Notice to take and filing interrogatories in clerk's office and the issuing of a commission are hereby waived.

BYRON RENFREW,
For Plaintiffs.
SIMS & COVINGTON,
Att'ys for Def't.

STATE OF INDIANA, }
Vanderburg County, } ss:

I, Elmer Q. Lockyear, a notary public in and for Vanderburg county, State of Louisiana, certify that pursuant to the interrogatories hereto annexed, the foregoing deposition of Louis I. Ahlering and Henry R. Scott were taken before me, at the time and place, and for the purposes stated in the caption; that the said witnesses were duly sworn before giving them, that they were written by me in their presence, and read to and subscribed by them in my presence and that neither the plaintiffs nor the defendant was present in person or by agent or attorney during the examination of
56 the witnesses, except Louis I. Ahlering and then only when testifying himself.

Given under my hand and seal this the 6th day of May 1897.

ELMER Q. LOCKYEAR,
[SEAL.] *Notary Public.*

Plaintiffs next read the deposition of J. E. Williamson, to the reading of which deposition of said Williamson or any portion thereof, the defendant excepted but the court overruled said exceptions and allowed the same to be read, to which ruling and judgment of the court, defendant excepted at the time and still excepts.

Said deposition is in words and figures as follows:

Also interrogatories to be propounded to J. E. Williamson, a witness for the plaintiff, who will be found at # 117 Upper Fourth street, in Evansville, Ind.

Int. 1. What is your name, residence, age and occupation?

Int. 2. Iy you say you are an attorney at law, state how long you have been such, and at what bar, you practiced and are now practicing.

Int. 3. Please state if you are acquainted with the defendant to this action, R. J. Meyler.

Int. 4. If you state you are acquainted with the defendant, R. J. Meyler, please state if you have had any professioanl employment by him.

57 Int. 5. If you state you have had such employment please state in what action and who were the plaintiffs, and defendant and in what court was it pending?

Int. 6. If you state you were employed by the defendant, R. J. Meyler, to defend him in a suit brought by C. L. Wedding and Louis I. Ahlering, against him in the Vanderburg county superior court, please state what that employment was, and your duties in reference thereto.

Int. 7. Please state what instructions, if any, he gave you as to entering his appearance in that cause.

Int. 8. Please state if you did enter his appearance, and if so, how?

Int. 9. State what steps you took in the cause as his attorney.

Int. 10. State if you know who has been the regular attorneys representing R. J. Meyler, in Vanderburg county *is* if any one.

Notice to take and filing interrogatories in the clerk's office and the issual of a commission are waived.

WRIGHT & McELROY,
SIMS & COVINGTON,
Att'ys for Def't.

The following is the copy of the answers to the foregoing interrogatories:

58 Also the deposition of J. E. Williamson, taken at *at* the same time and place, and pursuant to interrogatories hereto annexed and for the same purposes as mentioned in the foregoing deposition (first deposition copied of Louis I. Ahlering):

J. E. WILLIAMSON being duly sworn to testify the truth, the whole truth and nothing but the truth in this case, deposeth as follows:

Answer 1. Fo- answer to interrogatory No. 1 propounded to him he says: My name is J. E. Williamson, reside at Evansville, Indiana, am 49 years of age, and am a lawyer by occupation.

Answer 2. Fo- answer to interrogatory two he says: I have practiced law at Evansville, Indiana, since 1870.

Answer 3. For answer to interrogatory 3 he says: I am acquainted with the defendant, R. J. Meyler.

Answer 4. For answer to interrogatory 4 he says: I have been employed by R. J. Meyler in and about several matters of his at Evansville.

Answer 5. For answer to interrogatory 5 he says: I was employed by said Meyler to defend an action brought by Charles L. Wedding and Louis I. Ahlering in the superior court of Vanderburg county. The employment was after this wise. I was sitting in the back room of my office engaged with other parties, Captain Meyler came
59 in and without stopping but a moment said, here is a copy of summons which has been served on me. Please look after it for me. He left the copy of summons and went away.

Answer 6. For answer to interrogatory 6 he says: He gave no

particular instruction as to entering his appearance, simply saying Look after this case for me, or words to that effect.

Answer 7. For answer to interrogatory 7 he says: On examining the summons I found he had been incorrectly named in the summons, and I entered his special appearance and moved to quash the summons and service. Thereupon the summons and complaint was corrected, which is allowable under the statute of this State. I then filed an answer going to the merits and notified Captain Meyler of my action in the premises. Captain Meyler contended that in as much as he was served on a boat which lay outside of the wharf boat in the Ohio river *the* he was not properly served on this account. I stated to him that there was nothing in this because the supreme court of this State had held that such service was good. I talked to him several times about the case personally and he wrote me on the subject. The case was set for trial and I notified him of
60 the date. Either the day of the trial or the day before he telegraphed me not to appear, but an appearance had been entered long before that date. I tried the case and claim was reduced fifty dollars and judgment taken for this much less than the original demand.

Answer 8. For answer to interrogatory see answer to above interrogatory.

Answer 9. For answer to interrogatory 9 see answer to interrogatory No. 7.

Answer 10. For answer to interrogatory 10 he says: I have had several matters for Captain Meyler but I believe he has also had other attorneys representing him here.

J. E. WILLIAMSON.

The following certificate was attached to the first deposition by Louis I. Ahrlering copied herein and this deposition.

STATE OF INDIANA, } ss:
Vanderburg County, }

I, T. Althouse, a notary public, in and for Vanderburg county, State of Indiana, certify that pursuant to the interrogatories and cross interrogatories hereto annexed, the foregoing deposition- of Louis I. Ahlering and J. E. Williamson, were taken before me at the time and place, and for the purposes stated in the cap-
61 tion: that the said witnesses were duly sworn before giving them, that they were written by me in their presence, and read to and subscribed by them in my presence, and that neither the plaintiffs nor defendant were present in person or by agent or attorney during examination of witnesses except Louis I. Ahlering and then only when testifying himself.

Given under my hand and seal this 13″ day of February 1897.

T. ALTHOUSE,
Notary Public.

[SEAL.]

The plaintiffs then introduced as evidence the laws of the State of Indiana passed at the fiftieth regular session of the General Assembly begun on the 4th day of Feb'y A. D. 1877 and read section 10 of chapter 34 being,

"An act to establish a superior court in the county of Vander-
" burg defining its jurisdiction, providing for the election and com-
" pensation of a judge thereof; to abolish the criminal court of said
" county and transferring its business to the circuit court thereof," and said section 10 reads as follows:

" Said court, within and for the county, shall have original con-
" current jurisdiction with the circuit court in all civil cases and
" jurisdiction concurrent with the circuit court in all cases of ap-
" peals from justices of the peace, boards of county commis-
62 " sioners and mayors or city courts in civil cases and all other
" appellate jurisdiction in civil causes now vested in and
" which may hereafter be vested by law in circuit courts, and said
" court shall also have concurrent jurisdiction in all actions by or
" against executors or administrators."

Also section 12, which is as follows:

" Said court shall be a court of record and general jurisdiction
" and its judgments, decrees, orders, and proceedings shall have the
" same force and effect as those of the circuit court."

Plaintiffs next introduced the Revised Statutes of Indiana containing also the United States and Indiana constitutions and an appendix of historical documents, purporting to be by the authority of the General Assembly, and read section 221, of the constitution of Indiana, which section reads as follows:

" In order that the boundaries of the State may be known and
" established it is hereby ordained and declared that the State of
" Indiana is bounded on the east by the meridian line which forms
" the western boundary of the State of Ohio on the south by the
" Ohio river from the mouth of the Great Miama river to the
" mouth of the Wabash river; on the west by a line drawn along
" the middle of the Wabash river, from its mouth to a point where
" a due north line drawn from the town of Vincennes would last
" touch the northwestern shore of said Wabash river; thence
63 " by a due north line, until the same shall intersect an east
" and west line drawn through a point ten miles north of
" the southern extreme of Lake Michigan; on the north by said
" east and west line until the same shall intersect the first men-
" tioned meridian line which forms the western boundary of the
" State of Ohio."

Plaintiffs also read section 222 from the said constitution of the State of Indiana, which section reads as follows:

" The State of Indiana shall possess jurisdiction and sovereignty
" coextensive with the boundaries declared in the preceding section;
" and shall have concurrent jurisdiction in civil and criminal cases
" with the State of Kentucky on the Ohio river, and with the State
" of Illinois on the Wabash river so far as said rivers form the com-
" mon boundary between this State and said States respectively."

Plaintiff also read from said Revised Statutes of the State of Indiana sections 1314 and 1433. Section 1314 is as follows:

"Circuit courts shall have original exclusive jurisdiction in all "cases at law and in equity whatsoever and in criminal cases and "actions for divorce except where exclusive or concurrent jurisdic- "tion is or may be conferred by law upon justices of the peace. It "shall also have exclusive jurisdiction of the settlement of
64 "decedents' estates and of guardianship provided, however "that in counties in which criminal or superior courts exist "or may be organized nothing in this section shall be construed to "deprive such courts of the jurisdiction conferred upon them by law. "And it shall have such appellate jurisdiction as may be conferred "by law and it shall have jurisdiction of all other causes, matters "and proceedings where exclusive jurisdiction thereof is not con- "ferred by law upon some other court or officer."

Section 1433 reads as follows:

"Justices of the peace shall have jurisdiction to try and determine "truth founded on contracts or torts where the debt or damage claim "or the value of the property sought to be recovered does not ex- "ceed one hundred dollars and concurrent jurisdiction to the amount "of two hundred dollars, but the defendant may confess judgment "for any sum not exceeding three hundred dollars.

"No justice shall have jurisdiction in any action for slander, for "malicious prosecution or breach of marriage contract nor in any "action wherein title to land shall come in question or the justice be "related by blood or marriage to either party."

Which was all the testimony introduced on behalf of the plaintiffs or offered in their behalf on the trial of this cause.

65 The defendant then introduced before the jury in evidence in his own behalf the following witnesses:

R. J. MEYLER, who being first duly sworn testified as follows:

I am the defendant, reside in Warren county, Kentucky and have always lived in Kentucky, never lived in Indiana. I was taking depositions on my boat out in the river opposite Evansville, Indiana, on the 27 of May 1896 in suit pending in Warren circuit court in which the court had required me to have my proof taken that week. And while so engaged was served with summons in this case by the sheriff of Vanderburg county, Ind., I had taken a Kentucky, examiner, Porter McKay, along to take the depositions and had just closed them and the boat had started up the Ohio river from the lower to the upper wharf boat when the sheriff handed me the summons, the boat was far out beyond low water mark off the Indiana side when the summons was handed me. My boat was not at any time that day attached to the Indiana shore. She was loading freight outside of the big wharf boat about 100 feet from shore and I and the boat were in Henderson county, State of Kentucky. Soon after the summons was handed me I went to J. Williamson's attorney's office and advised with him hurriedly. The substance of our conversation was this—I handed him the summons and told him I

was served out in the Ohio river in Henderson county, Ky.,
66 and claimed the service was illegal. He said the Ind. courts hold it good. I said the Ky. courts and the Supreme Court of the U. S. hold it bad. He said we have to obey our own State courts. He suggested that my name was wrong in the summons and he might quash it. I asked if it could be quashed without entering my appearance. He said yes, by a special appearance. I told him in no event enter my appearance. He then advised me that Ahlering & Wedding would prove enough to take judgment and that I had little show to defend the case if tried there and promised, at my request, to write me what the amount was that they sued me for and to see if the boat Co. was also sued. I did advise with Mr. Williamson as herein stated but did not authorize him to file an answer for me nor to enter my appearance in any manner, on the contrary told him not to do either, and did not employ him to defend the suit and never knew that an answer had been filed by him for me till since this suit was brought. I had never seen the Indiana suit or any order or step in it till after this suit was filed in this court. Mr. Williamson says he reduced the claim $50.00. He is mistaken, the record filed by plaintiffs shows that judgment was taken for all they sued for in Indiana. I wrote Mr. Williamson not to enter my appearance and the morning on the 3" of Oct. 1896 telegraphed him not to enter my appearance. The telegram which is filed, reads as follows:

The Western Union Telegraph Company.

67 Incorporated.

21,000 offices in America. Cable service to all the world.

Thos. T. Eckert, president and general manager.

Receiver's No.	Time filed.	Check.
	10.05 A.....	10 paid.

Send the following message subject to the terms on the back hereof which are hereby agreed to.

Oct. 3, 1896.

To J. E. Williamson, Evansville, Ind.:

Don't enter my appearance in Wedding against Meyler see letter.

R. J. MEYLER.

3 L. S. 10.08 A. F. (Copy.)

E. J. MARSHALL, *M'g'r.*

Read the notice and agreement on the back.

All messages taken by this company are subject to the following terms:

To guard against mistakes or delays, the sender of the message should order it repeated; that is telegraphed back to the originating office for comparison. For this, one half the regular rate is charged in addition. It is agreed between the sender of the following message and this company, that said company shall not be liable for mistakes or delays in the transmission or delivery, or for non-
delivery of any repeated message, beyond fifty times the sum
68 received for sending the same, unless specially insured, nor in any case for delays arising from unavoidable interruption in the working of its lines, or for errors in cipher or obscure messages. And this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company when necessary to reach its destination.

Correctness in the transmission of a message to any point on the lines of this company can be insured by contract in writing, stating agreed amount of risk, and payment of premium thereon, at the following rates, in addition to the usual charge for repeated messages, viz., one per cent. for any distance not exceeding 1,000 miles, and two per cent. for any greater distance. No employee of the company is authorized to vary the foregoing.

No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmitting offices; and if a message is sent to such office by one of the company's messengers, he acts for that purpose as agent of the sender.

Messages will be delivered free within the established free delivery limits of the terminal office. For delivery at a greater distance, a special charge will be made to cover the cost of such delivery.

The company will not be liable for damages or statutory
69 penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

THOS. T. ECKERT,
President and General Manager.

I met Mr. Ahlering in Hornbrook & Wheeler's offices in Evansville, Ind., about Sept. 1896. I had met him about 15″ of May 1896 there and he had proposed a compromise of their fee. I told him I did not owe them anything, that I was merely a stockholder in the company, he suggested for me to come down in a week or two and see if we could arrange their fee and I consented to do so. When we met in Sept. 1896 I told him at Hornbrook & Wheeler's office that I was not individually liable for their fee, that the directors had employed Judge Alfred Dyer to represent the boat Co. He said that Judge Dyer had gone to Europe and had left or turned the case over to him and he had got Wedding. I told him the only services they rendered me individually was filing a short answer denying merely that I was individually liable for Frank Tardy boat

store account; and they had charged me $50.00 and I had paid that sum to them. The suit at superior court of Vanderburg Co., Ind., against me was not for fees due by me to plaintiffs but for services claimed to have been rendered by them and that were rendered by them to the boat Co.

I — a stock-holder in the company and president of the com-
70 pany. He said he was willing to leave the amount to any reputable attorney. I said I would prefer to leave it to a jury of Warren Co., Ky. The boat Co. had some claims due them along the river and if we could collect them would try to get the boat Co. to pay them some money. I failed to get any of the claims collected. When he suggested a compromise I told him I would see Williamson when he came back from his summer vacation and assist in getting the boat Co. to pay them something. I did not tell Ahlering I had employed Williamson. I told him I had advised with Williamson but little and did not intend to try the case in Indiana.

On cross-examination :

Stated that the wharf boat stands 30 or 40 feet out from levy, or bank at Evansville, then the W. boat is about 50 feet wide and our boat while loading freight lay outside of this wharf-boat. Mr. Williamson wrote me one or two letters in regard to the suit in Indiana. I don't know where they are now.

I advised with Mr. Williamson but did not employ him to defend the case or to answer for me or enter my appearance. I had a good defense to the action but did not intend to try the case over there.

The defendant next introduced as a witness in his behalf PORTER McKAY, who having been duly sworn testified as follows :

71 Defendant then introduced Porter McKay who stated :

I reside in Bowling Green Kentucky and have always lived here or in Kentucky. Mr. Meyler employed me as examiner to take depositions along Green river and near Evansville in June 1896. We took depositions on the steam-boat of Mr. Meyler or the boat company out in the river the steamer on outside of the wharf boat some distance from the shore and a man about or on the 27 May '96, purporting to be the sheriff of Vanderburg county, Indiana, handed Mr. Meyler a copy of a summons case Ahlering &c. *vs.* Meyler pending in Vanderburg superior court while the boat was out in the river going up the river from the lower to the upper wharf boat. Mr. Meyler called my attention to the fact of summons being served out in the river.

Which is all the testimony offered by defendant or introduced before the jury in his behalf.

Be it further remembered that at the conclusion of the testimony the court upon his own motion gave to the jury instructions to return in writing answers to the following questions :

Question 1. When the summons in this case was served upon defendant Meyler on the Ohio river was said Meyler on the Indiana or Kentucky side of the low water mark of said river where it touches the Indiana shore?

72 Question 2. Did defendant Meyler authorize J. E. Williamson to represent him as his attorney for any purpose in the superior court of Vanderburg county, Ind., in the suit of C. L. Wedding &c. *versus* R. J. Meyler, if so, what was the nature and extent of the authority thus given?

Which was all the instructions given to the jury.

After argument by counsel, the jury returned into open court answers in writing to said questions. In answer to the first question the jury said as follows:

"On the Kentucky side of the low water mark."

In answer to question 2, the jury returned the following verdict:

"We do not believe R. J. Meyler authorized J. E. Williamson to represent him as his attorney."

Said answers being signed by C. A. Gossam, A. Reynolds, J. E. Jenkins, J. W. Graham, John A. Robinson, W. K. Barre, S. M. Beckham, W. K. Heard and Jasper E. Dodd.

Whereupon, plaintiffs moved the court for a judgment in their favor against the defendant, notwithstanding, the verdict of the jury, and defendant moved for a judgment against plaintiff dismissing their petition and the court taking said motions under consideration, rendered judgment in favor of plaintiffs as follows:

73 Warren Circuit Court.

CHARLES L. WEDDING and LOUIS I. AHLERING
vs.
R. J. MEYLER. } Judgment.

This cause having been submitted to the court upon a motion of the plaintiffs for a judgment against the defendant, R. J. Meyler, notwithstanding the verdict of the jury herein heretofore rendered and the court being sufficiently advised adjudges that said motion be and the same is hereby sustained. It is therefore adjudged by the court that the plaintiffs, Charles L. Wedding and Louis I. Ahlering, recover of the defendant, R. J. Meyler, the sum of two hundred dollars with 6 % interest from Oct. 5th. 1896 until paid and the further sum of $8.40 costs in the Vanderburg superior court of Vanderburg county, State of Indiana, and also their costs in this cause expended. To which judgment of the court the defendant, R. J. Meyler, excepts and prays an appeal to the court of appeals which is granted.

To which judgment of the court defendant, excepted at the time and still excepts, and prayed an appeal to the court of appeals which was granted. Whereupon, on the same day that said judgment was rendered, defendant Meyler moved the court to set

74 aside said judgment and grant him a new trial and to render a judgment in his favor against plaintiffs after the verdict of

the jury rendered herein, which motion for a new trial and for judgment based upon the verdict of the jury the court overruled. Said motion and grounds for a new trial is in words and figures as follows, to-wit:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Motion and Grounds for New Trial.

This day comes, defendant, R. J. Meyler, and moves the court to set aside the judgment rendered herein on this day by the court, which judgment was rendered in favor of the plaintiffs and against this defendant, notwithstanding the verdict of the jury returned herein, and for grounds says: That the court erred in not rendering a judgment in favor of this defendant, upon the verdict of the jury, and the court erred in rendering judgment against this defendant in favor of plaintiffs notwithstanding the verdict of the jury and notwithstanding the fact that defendant was entitled to a judgment against plaintiff upon said verdict of the jury, and the verdict is referred to and made a part hereof.

The court erred in holding and adjudging that the law in
75 this case was for the plaintiffs and that they were entitled to judgment against this defendant when the fact existed and was established by the said verdict of the jury that the judgment upon which this suit was brought, rendered against defendant by the superior court of Vanderburg county, Ind., was based and rendered upon service of summons on this defendant by the sheriff of Vanderburg county, Ind., when this defendant was a citizen of Warren county, Ky., and was at the time of the service of said summons upon him not in the said county of Vanderburg, State of Indiana, but was within the county of Henderson, State of Kentucky, and never thereafter entered his appearance to said suit and the said judgment of the said superior court is for that reason void, and the said court had no jurisdiction of this defendant.

Wherefore, defendant prays that said judgment rendered herein against him on said verdict be set aside and held for naught; that he be granted a new trial and judgment be rendered for him against plaintiffs, and prays for all proper relief.

WRIGHT & McELROY,
SIMS & COVINGTON,
Attorneys for Defendant.

To which judgment and ruling of the court the defendant excepted at the time, and prayed an appeal to the court of appeals, which was granted. And defendant prays that this his bill
76 of exceptions be signed, enrolled and spread upon the records, which is done accordingly.

W. E. SETTLE, *Judge.*

The following is a copy of the supersedeas bond taken by the clerk of this court:

Supersedeas Bond.

It is necessary for sureties only to sign this bond.

Court of Appeals.

R. J. MEYLER, Appellant,
against
CHAS. WEDDING, Appellee.

Upon an appeal from the judgment of the Warren circuit court, rendered 11" day of June 1897.

Whereas, said R. J. Meyler, appellant, prayed an appeal from the judgment of the Warren circuit court, rendered at its May term, 1897, against him in favor of the appellee, for the sum of (200.00) two hundred dollars with 6% interest from 5 Oct. 1896 and $18.40 with 6% from June 11th. 1897 and ($18.05) eighteen and 05/100 dollars costs and appellant desires to supersede the said judgment above mentioned;

Now, we, R. J. Meyler, principal and —— ——, surety, do hereby covenant to and with the appellees Chas. Wedding and Lewis I. Ahlering that the appellant will pay to the appellee all costs and damages that may be adjudged against the appellant on the appeal, and also that they will satisfy and perform the judgment above stated, in the event that it should be affirmed, and any judgment or order which the court of appeals may render, or order to be rendered by the inferior court, not exceeding in amount or value the judgment aforesaid.

77

Witness our hands, this 26 day of July 1897.

R. J. MEYLER.
J. T. DISHMAN.

Approved,
J. B. STUBBINS,
C. W. C. C.

The following is a copy of the supersedeas issued upon the foregoing bond:

Supersedeas on an Appeal to the Court of Appeals.

STATE OF KENTUCKY:

Warren Circuit Court.

R. J. MEYLER, Appellant,
against
CHAS. WEDDING, &c., Appellee. } Supersedeas.

I do certify that an appeal has been granted from this court from a judgment obtained by Chas. Wedding &c. against R. J.
78 Meyler for ($200.00) two hundred dollars with 6 % — 5" Oct. 1896 and ($18.40) eighteen 40/100 dollars with 6 % from June 11" 1897 and costs in the Warren circuit court, at its May term, 1897, and that a supersedeas bond has been executed as required by section 749, Codes of Practice. Therefore the appellee and all others are commanded to stay proceedings on the said judgment above recited.

Witness my hand as clerk of said court, this 26th day of July 1897.

J. B. STUBBINS, *C. W. C. C.*

The following return is indorsed on the back of said supersedeas:

Executed the within supersedeas on Chas. Wedding &c. by delivering a copy thereof to his attorney, Byron Renfrew, who accepted said service. This July 28/97.

ROB'T RODES, JR., *S. W. C.*,
By L. F. WADDLE, *D. S.*

The following is a copy of an order entered in open court on the 26" day of February 1901, that being the 8" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c.,
vs.
R. J. MEYLER. } Order.

79 On motion of defendant it is now ordered that this cause be reinstated on the docket.

The following is a copy of an order entered in open court on the 26" day of February 1901, that being the 8" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

Came defendant and tendered and offerred to file the mandate of the court of appeals herein and for judgment thereon.

The following is a copy of the mandate of the court of appeals tendered and offered to be filed on the 26" day of February 1901, that being the 8" day of the February term:

THE COMMONWEALTH OF KENTUCKY:

The Court of Appeals.

NOVEMBER 24, 1899.

R. J. MEYLER, Appellant, *against* CHAS. L. WEDDING, &c., Appellees. } Appeal from a Judgment of the Warren Circuit Court.

80 The court being sufficiently advised, it seems to them the judgment herein is erroneous.

It is therefore considered that said judgment be reversed and cause remanded with directions to the court below to render judgment on the verdict dismissing the action and for further proceedings consistent with the opinion herein.

Which is ordered to be certified to said court.

A copy.
Attest:
S. J. SHACKELFORD, *C. C. A.*,
By ROB'T L. GREENE, *D. C.*

Issued Dec'r 26" 1900.

The following is a copy of the opinion referred to in the above mandate:

Court of Appeals of Kentucky.

NOVEMBER 24", 1899.

R. J. MEYLER, Appellant, *vs.* CHAS. L. WEDDING, &c., Appellees. } Appeal from a Judgment of the Warren Circuit Court.

Opinion of the Court by Judge White.

This action was instituted on a judgment of the superior court of Vanderburg county, Ind.

Appellant Meyler defended upon the ground that the court ren-

dering the judgment did not have jurisdiction to render the
81 judgment.

The answer admits that on May 27, 1896, the sheriff of Vanderburg county, Ind., handed to appellant a summons directing appellant to appear before the judge of the superior court of the county of Vanderburg on or before June 8, 1896, to answer a petition of appellees. The answer, however, alleges that this delivery was made in the county of Henderson, this State, and that there was no service of any kind had in the county of Vanderburg. The answer further alleged that appellant did not appear in person or by attorney in that action at any time, nor was there ever a trial of the action on the merits. Appellant also denied any indebtedness to appellees on any account whatever.

The allegations of the answer were denied by reply. The issue presented was tried before a jury who were instructed to return special findings, two in number.

The first question submitted is: "When the summons in this case was served upon defendant Meyler on the Ohio river, was said Meyler on the Indiana or Kentucky side of the low-water mark of said river where it touches the Indiana shore?"

The jury answered: "On the Kentucky side of the low-water mark."

Question 2: "Did defendant Meyler authorize J. E. Williamson to represent him as his attorney for any purpose in the su-
82 perior court of Vanderburg, Ind., in the suit of L. C. Wedding, &c., *v.* R. J. Meyler? If so, what was the nature and extent of the authority thus given?"

The jury answered: "We do not believe R. J. Meyler authorized J. E. Williamson to represent him as his attorney."

The proof showed that summons was served on appellant by the sheriff of Vanderburg county while appellant was on a steamboat in the Ohio river, and also that appellant never in person appeared in that court.

Appellees moved for judgment notwithstanding the special findings of the jury, and the appellant moved for a judgment of dismissal on the findings. The court sustained the motion of appellees and rendered judgment for the amount of the judgment of the Indiana court. After appellant's motion for a new trial had been overruled he appeals. By the proof and special findings of the jury it appears that appellant did not enter his appearance to the action in Indiana either in person or by attorney, and that at the time summons was served on appellant he was outside of low-water mark on the Indiana shore of the Ohio river, and of necessity within the territorial limits of the county of Henderson, Ky. (Louisville Bridge Co. *v.* City of Louisville, 81 Ky., 194; McFall *v.* Commonwealth, 2 Met. 394; Handley *v.* Antony, 5 Wheat., 374.)

However, it is insisted by counsel for appellees, and evidently this view was held by the trial court, that although the State of
83 Kentucky owns the soil to low-water mark on the northwestern shore of the Ohio river, the jurisdiction over the rvier is

concurrent in the States bordering thereon, and it is insisted that by the 11th. section of the enactment, known as the compact with Virginia, the States north and west of the river have jurisdiction concurrent with Kentucky over the river.

In the McFall case, *supra*, this court said: "The word, jurisdiction, as applied to a State and as used in the compact with Virginia, imports nothing more than the power to govern by legislation; and without legislative enactments to enforce and carry out the jurisdiction so conferred it cannot of itself be regarded as operative or effective to protect the appellant or to defeat the right of our own tribunals to enforce and execute our own penal and criminal statutes."

Section 221 of the constitution of the State of Indiana, read as evidence, provides as the boundary of the State "on the south by the Ohio river from the mouth of the Great Miami river to the mouth of the Wabash river; on the west by a line drawn along the middle of the Wabash river from the mouth to a point where a due north line drawn from a town of Vincennes would last touch the northwestern shore of said Wabash river." * * *

Section 222 of the constitution reads: "The State of Indiana shall possess jurisdiction and sovereignty coextensive with the
84 boundaries declared in the preceding section, and shall have concurrent jurisdiction in civil and criminal cases with the State of Kentucky on the Ohio river, and the State of Illinois on the Wabash river so far as said rivers form the common boundary between this State and said States respectively."

The record shows that the superior court of Vanderburg county that rendered the judgment had jurisdiction of the subject-matter of that action.

The only question, therefore, that arises on this appeal is, did that court acquire jurisdiction of the person of appellant by the service of the summons on him while he was afloat on the river and south of low-water mark?

Section 11 of the compact of Virginia reads: "Seventh, that the use and navigation of the River Ohio, so far as the territory of the proposed State, or the territory which shall remain within the limits of this Commonwealth lies thereon, shall be free and common to the citizens of the United States, and the respective jurisdictions of this Commonwealth, and of the proposed State, on the river aforesaid, shall be concurrent only with the States which may possess the opposite shores of the said river."

It appears by the constitution of the State of Indiana, *supra*, that that State has exercised legislative jurisdiction over the River Ohio, and, therefore, is entitled to the full benefit of the act of Virginia, commonly called compact, *supra*.

85 We are referred in brief of counsel for appellees to several decisions of the supreme court of Indiana, wherein it is held that that State has concurrent jurisdiction with this State over the River Ohio.

We are also referred to decisions of the States of Ohio and Vir-

ginia as holding that by the compact with Virginia, *supra*, the jurisdiction over the River Ohio is concurrent.

The Virginia court, in Garner's case, 3 Gratt., 655, seems to have held that the Virginia court did not have jurisdiction to try Garner for an offense against the laws of Virginia, committed while standing in the water above the low-water mark on the Ohio shore, the court holding that the act was committed beyond the territory of the State, although in the water. A minority of the court being of the opinion that Virginia jurisdiction and territory extended to the top of the bank on the Ohio side.

In a subsequent case West Virginia supreme court held the view of the minority in Garner's case, and claimed jurisdiction over the entire river, and although the vessel was tied to the Ohio shore. (State *v.* Plants, 25 W. Va., 119; S. C. 52 Am. R., 211.)

The subject of concurrent jurisdiction between States bordering on a river has frequently come up for adjudication throughout the Union.

In 1816 an act was passed by the legislature of Virginia
86 permitting the erection of a bridge across the Ohio river at Wheeling; that privilege was extended by acts till 1847.

In 1849 the State of Pennsylvania brought an action in the Supreme Court of the United States, seeking an injunction against the maintenance of the bridge, because the same obstructed navigation. The court on preliminary hearing (9 Howard, 647), made an order appointing a commissioner to take proof as to the obstruction, if any, by the bridge. Subsequently (13 Howard, 518) upon final hearing, it was adjudged that the bridge obstructed navigation and would have to be removed or raised, and an order was entered to that effect.

In the opinion rendered in that case it was admitted that there was ample authority to erect a bridge; that the act of the Virginia legislature gave ample authority; but that the bridge obstructed navigation and thereby violated its charter, even were it not for the acts of Virginia ceding to the whole people the free and unobstructed navigation of the Ohio river.

The case was again before the court (18 Howard, 421). It there appeared that subsequent to the former opinion Congress had declared the bridge not to be an obstruction to navigation, and had provided that all vessels should be so regulated as not to interfere with the bridge. The former order (13 Howard, 518) was annulled.

87 The court said: "We have already said, and the principle is undoubted, that the act of the legislature of Virginia conferred full authority to erect and maintain the bridge, subject to the exercise of the power of Congress to regulate the navigation of the river. That body having, in the exercise of this power, regulated the navigation consistent with its preservation and continuation, the authority to maintain it would seem to be complete. That authority combines the concurrent powers of both governments, State and

Federal, which, if not sufficient, certainly none can be found in our system of government."

By the compact entered into between the States of New Jersey and Pennsylvania in 1783 it is declared that the River Delaware, * * * in the whole length and breadth thereof, is and shall continue to be and remain a common highway, equally free and open for the use, benefit and advantage of the contracting parties; and that each State shall enjoy and exercise a concurrent jurisdiction within and upon the water between the shores of said river. (27 N. J. Eq., 631.)

This concurrent jurisdiction was held to mean that neither State could, without the consent of the other, grant exclusive privileges on the river. (President, Managers, &c., *v.* Trenton Bridge Co., 13 N. J. Eq. 46.) It was conceded that the boundary was the center of the stream.

In the case of Att'y-Gen'l *v.* D. & B. R'y Co., 27 N. J. Eq., 631, the court, after quoting from 13 N. J. Eq., 46 says: "The practice
88 thus mentioned shows that the legislature has usually, when exercising its concurrent jurisdiction under its interstate agreement with the view of providing for the construction of bridges over this river, employed language that imported an authority to cross the river from shore to shore. And justly, too, for though its authorization was not alone sufficient, as it has not exclusive jurisdiction, yet as it possessed jurisdiction of some sort over the whole of the waters, for the purpose of guarding the common highway, its permission was needed throughout by whomsoever claimed the right to interfere at all with this public privilege, hence it is a perfectly proper use of language to speak of the railroads of New Jersey as crossing the Delaware under the sanction of her laws."

The constitution of the State of Wisconsin, section 1, article 9, declares: "The State shall have concurrent jurisdiction on all rivers and lakes bordering on this State, so far as such rivers or lakes shall form a common boundary to the State and any other State or Territory now or hereafter to be formed and bounded by the same."

The same provision is found in the constitution of Minnesota, and is also contained in the enabling acts authorizing the two States. The legislature of Minnesota chartered the St. Croix boom corporation, and authorized it to erect booms in the River St. Croix. This
89 was done on that part of the St. Croix river forming a part of the boundary line between the States of Wisconsin and Minnesota. There was no similar grant by the State of Wisconsin. In an action for damages, in which the boom corporation justified under its authority from Minnesota, the supreme court of Wisconsin held, in a very elaborate opinion, that the State of Minnesota had power under its concurrent jurisdiction clause to grant the charter at least as to its half the river. (Keator Lumber Co. *v.* Boom Corp., 72 Wis., 62.)

Among other things, that court said in discussing the opinion of the United States Supreme Court in Wheeling Bridge case, 18 Howard, 421: "It must be conceded, however, that the power and jurisdiction of Virginia over the half of the river most distant from

it was greater than it otherwise would have been by reason of the terms and conditions upon which it parted with its title to the territory northwest of the Ohio."

There are numerous cases where the question of concurrent jurisdiction as applied to rivers forming a boundary line between States have arisen, and in these cases it has been almost universally held that that provision in the several compacts and acts means legislative jurisdiction to control the river and the free use thereof for purposes of navigation.

However, we are not without authority as to the jurisdiction of the States as regards civil and criminal jurisdiction of its courts
89½ over the rivers forming boundary lines.

The River Missi-ppi is the boundary line between the States of Iowa and Illinois, and by an act of the legislature of Iowa the Missi-ppi & Missouri R. R. Co. was authorized to erect a bridge over the river at Rock Island, and by a like act of the State of Illinois the Chicago & Rock Island R. R. Co. was authorized to bridge the Missi-ppi river at Rock Island. Under the two legislative acts a bridge was built, one entire structure, consisting of six piers with a draw. There were three piers on the Iowa side of the middle of the river, and three piers likewise on the Illinois side.

One Ward, the owner of a line of steamboats running on that part of the river between St. Louis, Mo., and St. Paul, Minn., brought his action in the United States court for the district of Iowa, seeking to have the bridge removed on the ground of a public nuisance as an obstruction to the free navigation of the river. The case went to the Supreme Court, and was there decided. (M. & M. R. R. Co. *v.* Ward, 2 Black, 485.)

The court said: "The constitution of Illinois calls for the middle of the Missi-ppi river as the western boundary of that State, and as Iowa was admitted into the Union after Illinois a line in the middle of the river is the dividing line between the States.

"The complainant sued in the Federal court because of his citi-
zenship in a different State from the defendant; and the
90 United States district court, holden in Iowa, could have exercised the same jurisdiction that a State court of Iowa could have exercised, and no more. It had no power beyond the middle of the river. On that part of the bridge within Iowa, and its piers, the court below acted, and ordered that the structure be removed. * * * It was at the long pier, and in the Illinois draw east of that pier that the complainant's boats sustained the injuries on which he found his right to sue the Iowa corporation, and to proceed against the bridge *in rem* as a public nuisance.

"An indictment could only have been prosecuted against the owner for keeping up the nuisance in Illinois in the courts of Illinois, because the nuisance was a trespass and crime against the laws of Illinois, and the injuries to the complainant's boats giving him the privilege to sue and abate the obstruction was as local as the public right to indicate. He asks nothing from the person of the

defendant, but seeks to remove a local object because he has sustained special damage from that object.

"The district court had no power over the local object inflicting the injury; nor any jurisdiction to inquire of the facts whether damage had been sustained, or how much. These facts are beyond the court's jurisdiction and powers of inquiry, and outside the case."

This position taken by the court as to jurisdiction is emphasized by a dissenting opinion of Mr. Justice Nelson, concurred in
91 by Justices Wayne and Clifford. The dissenting opinion does not claim jurisdiction for the court of Iowa upon any concurrent idea, but as said, "upon much higher and broader ground. The right to a free and unobstructed navigation of this river on the part of the public, and especially of the citizens of the United States, depends upon the Constitution and laws of the United States, the public law of the country." (Mr. Justice Nelson's dissent, 2 Black, 497.)

The enabling act of the State of Illinois, section 2, says: "Provided also, that the said State shall have concurrent jurisdiction with the State of Indiana on the Wabash river, so far as said river shall form a common boundary to both, and also concurrent jurisdiction on the Missi-ppi river, with any State or States to be formed west thereof, so far as said river shall form a common boundary to both."

The enabling act of Iowa provides, section 3: "And be it further enacted, That the said State of Iowa shall have concurrent jurisdiction on the River Missi-ppi, and every other river bordering on the said State of Iowa, so far as said river shall form a common boundary to said State and any other State or States now or hereafter to be formed or bounded by the same, such rivers to be common to both."

Thus it is clear that by the very highest authority the States of Iowa and Illinois were given concurrent jurisdiction over the River Missi-ppi, yet by the decision of the Supreme Court it was held
92 that the courts of Iowa could not exercise jurisdiction beyond the middle of the river, its boundary.

It is noticeable that in the enabling act of Illinois that State is guaranteed concurrent jurisdiction over the Rivers Missi-ppi and Wabash, yet as to the River Ohio, forming a part of its boundary, the same as that river forms a part of the boundary of Indiana—low-water mark on the northern shore—there is no mention of concurrent or other jurisdiction.

In the enabling act of Indiana, section 2, it reads: "Provided also, that the said State shall have concurrent jurisdiction on the River Wabash with the State to be formed west thereof, so far as said river shall form a common boundary to both."

The only authority under which Indiana can claim concurrent jurisdiction over the River Ohio is by reason of the compact with Virginia.

That part of the compact relating to the River Ohio and jurisdiction thereon is section 11, *supra*.

The concurrent jurisdiction therein guaranteed to the States owning the northwestern shores of the River Ohio has always been considered by the State of Illinois to be legislative only, and that State has never, so far as we are informed, assumed to its courts jurisdiction beyond its territorial limits. The rights of the State of Illinois must be the same as of the State of Indiana.

93 We are of the opinion clearly that concurrent jurisdiction as granted by the compact with Virginia meant only that the States should have legislative jurisdiction. This was done, as it seems to us, to insure to each State and to the citizens of the United States the free and unobstructed navigation of the river. In other words, concurrent jurisdiction was given and retained so that neither State, against the wish of the other or without the consent of the other, could authorize the construction of a bridge across the river, and so that each State could grant ferry privileges and wharfing privileges and regulate fishing therein, and such other rights common to both and necessary to be under a common supervision of both, to make the waters of the River Ohio a common, public, free and unobstructed highway for purposes of navigation.

It is the universal rule that the jurisdiction of all States *are* limited by their territorial boundaries. To make an exception to this rule requires an express stipulation. It is against all rules and precedent of law to grant to another State jurisdiction of the territory of a State, and if it be conceded that it can be done, it will never be by implication. If any grant be made it should always be held to be the least power that the words of the grant covers.

We realize that the courts of Indiana claim concurrent jurisdiction over the River Ohio, and that our opinion here is in conflict with that of the supreme court of Indiana, but we prefer to

94 follow the opinion of the Supreme Court of the United States in this matter, especially when it agrees with our ideas on the subject. (Louisville B. Co. *v.* Louisville, 81 Ky., 189.)

The constitution of Indiana, under which this concurrent jurisdiction is claimed, only gives or declares jurisdiction on the River Ohio "so far as said rivers (Ohio and Wabash) form the common boundary between this State and said States respectively."

The Wabash river forms the common boundary between the States of Indiana and Illinois, and by the enabling acts of both States concurrent jurisdiction is given over the Wabash. The Ohio river is not the common boundary between the State of Indiana and this State. The boundary line is low-water mark on the northeast, or Indiana side. (Indiana *v.* Kentucky, 136 U. S., —.)

So that if the letter of the constitution of Indiana be looked to alone, it does not declare that the courts of that State have jurisdiction, except on rivers forming the common boundaries thereof, which can not and does not include the River Ohio.

We are, therefore, of the opinion that the superior court of the county of Vanderburg, Ind., did not acquire jurisdiction of the person of appellant by the service of summons on him while on the river and

on this side of low-water mark, and by the verdict of the jury this was all the service ever had on appellant.

95 The judgment sued on is, therefore, void, and judgment upon the verdict should have been rendered for appellant.

For reasons indicated the judgment is reversed and cause remanded, with directions to render judgment on the verdict dismissing the action and for proceedings consistent herewith.

Whole court sitting.

The following is a copy of an order entered in open court on the 16" day of March 1901, that being the 24" day of the February term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

Ordered that the above styled cause be now continued.

The following is a copy of an order placed upon the order book for attorneys on the 17" day of April 1901, of record in my office:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order for Record.

Clerk will please copy the complete record of all pleadings, depositions and orders &c. in this case and charge to the State of

96 Indiana.

MERRILL MOORES,
Ass't Att'y General,
By BYRON RENFREW.
BYRON RENFREW.

The following is a copy of an order entered in open court on the 12" day of June 1901, that being the 21" day of the May term:

Warren Circuit Court.

C. L. WEDDING, &c., vs. R. J. MEYLER. } Order.

This day came plaintiffs and tendered bill of exceptions which was signed by the court and ordered to be filed.

The following is a copy of the bill of exceptions tendered, filed, signed and approved by the court on the 12" day of June 1901, that being the 21" day of the May term, in open court:

Be it remembered that on the twenty third day of May A. D. 1901, being the third day of the May term 1901 of the Warren circuit court the following proceedings were had before the
97 Honorable Warner E. Settle, sole judge of said court, in the case of—

CHARLES L. WEDDING and LOUIS I. AHLERING
vs.
ROMANZA JEROME MEYLER.

Come now the parties by counsel and the plaintiffs having heretofore, to wit: on the first day of the present term made their application for leave to amend their original petition by tendering the court an amended petition and praying for leave to file the same, the court now having examined said amended petition and having heard arguments upon the motion and prayer of plaintiffs for leave to file the same overruled said motion and denies the said prayer of the plaintiffs, the said amended petition being in words and figures following to-wit:

Warren Circuit Court.

CHARLES L. WEDDING and LOUIS I. AHLERING, Pl'ffs,
vs.
ROMANZA JEROME MEYLER, Def't. } Amended Petition.

Come the plaintiffs, Charles L. Wedding and Louis I. Ahlering, and by leave of court amend their original petition herein and for amendment state that the judgment upon which their cause of action herein was brought was a judgment of the superior court of the county of Vanderburg, State of Indiana, and that the
98&99 record of said action in said superior court was attested and certified according to the laws of the State of Kentucky and the laws of the Congress of the United States and that said judgment and the record in said action by virtue of the provisions of the Constitution of the United States, article IV, section 1, are entitled to full faith and credit in the court of the State of Kentucky and which said provision of the Constitution of the United States they plead and rely upon.

Plaintiffs further state that by virtue of the constitution of the State of Indiana and the laws made in pursuance thereto and by virtue of the compact of the State of Virginia with the State of Kentucky and approved December 18th, 1789 and ratified by the Congress of the United States that said State of Indiana has concurrent jurisdiction with the State of Kentucky over the Ohio river for the service of civil and criminal process and which said compact of Virginia with Kentucky and ratification by the Congress of the United States they plead and rely upon herein.

Plaintiffs further state that by virtue of sec. 905 Revised Statutes

of the United States that the judgment of the superior court of Vanderburg county State of Indiana is entitled to the same faith and credit in the courts of this State as it has by the laws and usages of the courts of the State of Indiana and which said sec. 905 of the Revised Statutes of the United States they plead and rely upon herein.

100 Wherefore they pray as in their original petition &c.

BYRON RENFREW,
JOHN B. RODES,
For Plaintiffs.

To which ruling of the court the plaintiffs at the time object and except and time is given plaintiffs in which to prepare this bill of exceptions and now upon this 20th day of the May term 1901 of this court and upon the day of such ruling and within the time given for the preparation of a bill of exceptions come the plaintiffs and tender this bill of exceptions and the court having examined and approved such bill of exceptions finding the same to be true does now sign the same and directs that the same be made a part of the record in this case.

W. E. SETTLE, *Judge.*

The following is a copy of an order entered in open court on the 15th. day of June 1901, that being the 24th. day of the May term:

Warren Circuit Court.

C. L. WEDDING, &c., *vs.* R. J. MEYLER. } Order.

It is now ordered that the plaintiffs in this cause for the purpose of an appeal to the Supreme Court of the United States shall
101 execute bond in the sum of $2,000.00 with good and sufficient surety.

The following is a copy of the judgment entered in open court on the 15th. day of June 1901, that being the 24th. day of the May term:

Warren Circuit Court.

C. L. WEDDING, &c., *vs.* R. J. MEYLER. } Judgment.

The mandate of the court of appeals herein is ordered to be and is hereby filed of record, same being in words and figures as follows, to-wit:

THE COMMONWEALTH OF KENTUCKY:

The Court of Appeals.

NOVEMBER 24, 1899.

R. J. MEYLER, Appellant,
against
CHAS. L. WEDDING, &c., Appellee. } Appeal from a Judgment of the Warren Circuit Court.

The court being sufficiently advised, it seems to them the judgment herein is erroneous.

It is therefore considered that said judgment be reversed and cause remanded with direction to the court below to render judgment on the verdict dismissing the action and for further proceedings consistent with the opinion herein.

Which is ordered to be certified to said court.

A copy.

Attest:

S. J. SHACKELFORD, *C. C. A.*,
By ROB'T L. GREENE, *D. C.*

102 Issued Dec'r 26, 1900.

Therefore in pursuance of said mandate of the court of appeals the judgment of this court in plaintiffs' favor heretofore rendered herein upon the grounds that the judgment sued on by plaintiffs in this court from the superior court of Vanderburg county, Indiana, rendered in plaintiffs' favor by said court on a summons served on defendant, Romanzo Jerome Meyler, on the Ohio river, said judgment being certified according to the act of Congress is entitled to full faith and credit in the courts of Kentucky because by virtue of the constitution and laws of Indiana and the compact of the State of Virginia with Kentucky approved by the Congress of the United States December 18, 1789, and ratified by Congress of the United States by its act duly approved the courts of the State of Indiana have concurrent jurisdiction with the State of Kentucky over the Ohio river for the service of civil and criminal process is now ordered to be and is hereby set aside and held for naught and in lieu thereof in further obedience to said mandate and opinion it is adjudged that the service of summons from the superior court of Vanderburg county of Indiana had upon defendant upon the Ohio river was invalid and conferred no jurisdiction upon said court to render judgment against defendant as neither by the Virginia compact nor by the constitution and laws of Indiana were the courts of that State given jurisdiction concurrent with the courts of Kentucky for
103 the service of process on the Ohio river and it is therefore adjudged that defendant is entitled to judgment on the verdict of the jury and plaintiffs' action be dismissed and further that defendant recover of plaintiffs his costs in this court expended whether accrued before or since the taking of the appeal herein.

To so much of the foregoing judgment as recites the ground upon

which plaintiffs were given judgment against defendant by this court and the grounds and reason for reversal of the judgment by the court of appeals as does more than obey the mandate of the court of appeals the defendant Meyler objects, excepts and prays an appeal to the court of appeals.

The following is a copy of the order entered upon the attorneys' order book May 30" 1901:

CHAS. L. WEDDING ET AL.
vs.
R. J. MEYLER. } No. 3102.

The clerk will prepare copy of the record not heretofore copied for the preparation of a transcript for appeal to the Supreme Court of the United States.

MERRILL MOORES,
BYRON RENFREW,
JOHN B. RODES,
Attorneys for Pl'ffs.

104 STATE OF KENTUCKY, } *sct:*
County of Warren, }

I, W. H. Jones, clerk of the Warren circuit court, do hereby certify that the foregoing 103 pages contain a true, correct and complete copy and transcript of all the steps, proceedings and of the record in the case late pending in this court in which Charles L. Wedding and Louis I. Ahlering were plaintiffs, and R. J. Meyler was defendant.

In testimony whereof I have hereunto set my hand and affixed my official seal as clerk of said court, this the 4" day of June, A. D. 1902.

[Seal Warren Circuit Court, Kentucky.]

W. H. JONES,
Clerk of Warren Circuit Court.

105 UNITED STATES OF AMERICA:

STATE OF KENTUCKY, } *sct:*
County of Warren, }

I, W. E. Settle, sole presiding judge of the Warren circuit court of Warren county, Kentucky, do hereby certify that W. H. Jones, whose name is subscribed to the foregoing certificate of attestation, now is, and was at the time of signing and sealing the same, the clerk of the Warren circuit court of Warren county, aforesaid, and the keeper of the records and seal thereof, duly elected and qualified to office, and that full faith and credit are and of right ought to be given to all of his official acts as such in all courts of record and elsewhere, and that his attestation is in due form of law and by the proper officer.

Given under my hand as judge of said court, this June 4" A. D. 1902.

W. E. SETTLE,
Judge of the Warren Circuit Court.

106 UNITED STATES OF AMERICA:

STATE OF KENTUCKY, } *sct:*
County of Warren, }

I, W. H. Jones, clerk of the Warren circuit court, of Warren county, State of Kentucky, do hereby certify that W. E. Settle, whose genuine signature as sole presiding judge of the Warren circuit court of Warren county, State of Kentucky, appears to the foregoing certificate, was at the time of making the same, and still is presiding judge of the Warren circuit court of Warren county, Kentucky, and I further certify that said court is a court of record, and duly authorized and organized by and under the constitution and laws of the State of Kentucky, and that said certificate is in due form of law and by the proper officer.

In testimony whereof I have hereunto set my hand and affixed my official seal, as clerk of said court, this June 4" A. D. 1902.

[Seal Warren Circuit Court, Kentucky.]

W. H. JONES,
Clerk of Warren Circuit Court.

107 The following is a copy of the writ of error filed in office on the 28" day of August 1902:

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable judge of the Warren circuit court of the Commonwealth of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Warren circuit court, before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles L. Wedding and Louis I. Ahlering, plaintiffs, and Romanza Jerome Meyler, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitu-

tion, treaty, statute, or commission; a manifest error hath
108 happened to the great damage of the said Charles L. Wedding and Louis I. Ahlering, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th. day of August, in the year of our Lord one thousand nine hundred and two.

(S'g'd) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
(S'g'd) R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

The following is a copy of the bond filed in office on the 28″ day of August 1902:

109 Know all men by these presents, that we, Charles L. Wedding and Louis I. Ahlering, as principals and American Bonding Company of Baltimore, as sureties, are held and firmly bound unto Romanza Jerome Meyler in the full and just sum of two thousand dollars, to be paid to the said Romanza Jerome Meyler, his certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th. day of August, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a session of the Warren circuit court, of the State of Kentucky, in a suit depending in said court, between Charles L. Wedding and Louis I. Ahlering, as plaintiffs, and Romanza Jerome Meyler, as defendant, a judgment was rendered against the said Charles L. Wedding and Louis I. Ahlering and the said Charles L. Wedding and Louis I. Ahlering having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Romanza Jerome Meyler citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within — days from the date thereof.

Now, the condition of the above obligation is such, that if the said Charles L. Wedding and Louis I. Ahlering shall prosecute
110 said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES L. WEDDING. [SEAL.]
LOUIS I. AHLERING. [SEAL.]
[SEAL.] AMERICAN BONDING COMPANY OF BALTIMORE, [SEAL.]
By AQUILLA C. JONES, *Vice-Pres't.*

Attest: WILLIAM E. BARTON,
Ass't Sec'y.

Sealed and delivered in the presence of
MERRILL MOORES.
FROST KING.

Approved by
R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

Aug. 25, 1902.

111 STATE OF KENTUCKY, } *sct:*
County of Warren, }

I, W. H. Jones, clerk of the Warren circuit court, do hereby certify that the foregoing 110 pages contain a true, correct and complete copy and transcript of all the steps, proceedings and of the record in the case late pending in this court in which Charles L. Wedding and Louis I. Ahlering were plaintiffs, and R. J. Meyler was defendant.

In testimony whereof I have hereunto set my hand and affixed my official seal as clerk of said court, this the 28th day of August, A. D. 1902.

[Seal Warren Circuit Court, Kentucky.]

W. H. JONES,
Clerk of Warren Circuit Court.

112 In the Supreme Court of the United States.

CHARLES L. WEDDING and LOUIS I. AHLERING }
v.
ROMANZA JEROME MEYLER. }

Petition for Allowance of Writ of Error.

To the Honorable the Chief Justice of the Supreme Court of the United States:

The petition of Charles L. Wedding and Louis I. Ahlering respectfully shows that on the fifteenth day of June, A. D. 1901, the

Warren circuit court of the State of Kentucky, under the specific order and mandate of the court of appeals of the State of Kentucky, being the highest court of the State of Kentucky in which a decision of the suit could be had, rendered a judgment against your petitioners in a certain cause wherein your petitioners were plaintiffs, and the defendant in error, Romanza Jerome Meyler was defendant for the costs of suit and awarded execution thereon, as will appear by reference to the record and proceedings in said cause; the said court being the highest court in Kentucky in which a decision in said suit could be had.

And your petitioners claim the right to remove said judgment to the Supreme Court of the United States, by writ of error, under statutes of the United States authorizing writs of error to State
113 courts, and particularly under section 709 of the Revised Statutes of the United States, because in the record and proceedings had in said cause and in the rendition of said judgment manifest error happened to the great damage of these petitioners in that in said cause and judgment it was held and adjudged that the superior court of the county of Vanderburg, in and of the State of Indiana, being a superior court of general jurisdiction of the State of Indiana, did not acquire jurisdiction of the person of the defendant in error by the service upon said defendant of a summons issued out of said court to the sheriff of Vanderburg county, Indiana, commanding the said defendant in error to appear in said court and defend, in a suit pending in said superior court, wherein plaintiffs in error were plaintiffs and said defendant in error was defendant, the said defendant in error being at the time of such service afloat on the Ohio river to the south of low water mark on the Indiana bank, between the eastern and western boundaries of Vanderburg county, Indiana, and Henderson county, Kentucky, and that a judgment which was recovered therein in said superior court of the county of Vanderburg, of the State of Indiana, by the plaintiffs in error against the defendant in error, is void and of no effect, which judgment of the Warren circuit court

(1.) Denied to and withheld from judicial proceedings of the State of Indiana, the full faith and credit guaranteed in and by the Constitution of the United States in each State to the public acts, records and judicial proceedings in every other State, contrary to the provisions of article IV, section 1, of the Constitution of the United States;

(2.) Denied to and withheld from the records and judicial proceedings of the State of Indiana properly authenticated, as provided by law, such faith and credit as they have by law and usage in the courts of the State of Indiana, in violation of section 905 of the Revised Statutes of the United States, and contrary to the pro-
114 visions of article IV, section 1, of the Constitution of the United States.

(3.) Denied the validity of a statute of the Congress of the United States, entitled "An act declaring the consent of Congress that a new State be formed within the jurisdiction of the Common-

wealth of Virginia, and admitted into this Union by the name of the State of Kentucky," approved February 4, 1791. (U. S. Statutes at Large, 189); and also the validity of an act of the General Assembly of the Commonwealth of Virginia, entitled "An act concerning the erection of the district of Kentucky into an independent State," approved December 18, 1789, referred to in said act of Congress, such decision and judgment being against the validity of said acts.

(4.) Denied the authority exercised by officers of the State of Indiana, under a statute of the Congress of the United States, entitled "An act declaring the consent of Congress that a new State be formed within the jurisdiction of the Commonwealth of Virginia, and admitted into this Union, by the name of the State of Kentucky," approved February 4, 1791 (1 U. S. Statutes at Large, 189); and also under an act of the General Assembly of the Commonwealth of Virginia, entitled "An act concerning the erection of the district of Kentucky into an independent State," approved December 18, 1789, referred to in said act of Congress, such decision and judgment being against the validity of the authority exercised by officers of the State of Indiana, under said acts.

(5.) Denied the title, right, privilege and immunity of the State of Indiana, through its officers to serve civil process on the Ohio river, between the Indiana and Kentucky banks south of low water mark on the north bank of said river, in which decision and judgment the title, right, privilege and immunity of the State of Indiana, by its officers, to serve civil process on the Ohio river, between said States, *was* specially set apart and claimed by the plaintiffs under the Constitution of the United States, and under a statute of
115 the Congress of the United States, entitled "An act declaring the consent of Congress that a new State be formed within the jurisdiction of the Commonwealth of Virginia, and admitted into the Union, by the name of the State of Kentucky," approved February 4, 1791. (1 U. S. Statutes at Large, 189); and under an act of the General Assembly of Virginia, entitled "An act concerning the erection of the district of Kentucky into an independent State," approved December 18, 1789, referred to in said act of Congress; said decision and judgment being against the title, right, privilege and immunity of the State of Indiana, by its officers, to serve civil process on the Ohio river, between the Indiana and Kentucky banks, south of low water mark on the north bank of said river, specially set apart and claimed by the plaintiffs.

(6.) Sustained the validity of a statute of the State of Kentucky, entitled "An act to ratify and confirm the adjustment of the boundary line between this State and the State of Tennessee, according to the articles of stipulation entered into by the commissioners appointed by both States," approved February 11, 1820, wherein and by which act the entire boundary of Kentucky is defined, including its northern boundary, and it is provided that "the sovereign power and jurisdiction of the Commonwealth of Kentucky extends to and over the entire soil and waters within the limits de-

scribed in the preceding section, except so far as she may have ceded jurisdiction to the United States, for national purposes," which statute as construed by said Warren circuit court and said court of appeals of Kentucky, impairs the obligation of a contract entered into between the Commonwealth of Virginia and the district of Kentucky, by and with the consent of Congress, and accepted by the State of Kentucky, contained in an act of the General Assembly of Virginia, entitled "An act concerning the erection of the district of Kentucky into an independent State," approved December 18, 1789, and commonly known as the Virginia compact, contrary to the pro-
116 visions of article I, section 10, of the Constitution of the United States.

All of which appears by the record of the proceedings in said cause, which is herewith submitted.

Wherefore your petitioners pray the allowance of a writ of error, returnable into the Supreme Court of the United States, and for citation and supersedeas; and they will ever pray, etc.

CHARLES L. WEDDING,
LOUIS I. AHLERING,
Petitioners,
By WILLIAM L. TAYLOR AND
MERRILL MOORES,
Attorneys for Plaintiffs in Error.

Rec'd—Aug. 25, 1902.

R. W. PECKHAM,
Jus. Sup. Ct. U. S.

117 [Endorsed:] No. —. Charles L. Wedding and Louis I. Ahlering *v.* Romanza Jerome Meyler. Petition for allowance of writ of error. William L. Taylor, attorney-general of Indiana, attorney for plaintiffs in error.

118 In the Supreme Court of the United States.

CHARLES L. WEDDING and LOUIS I. AHLERING
v.
ROMANZA JEROME MEYLER.
} On Writ of Error to the Warren Circuit Court of Kentucky.

Assignment of Errors.

The said plaintiffs in error, Charles L. Wedding and Louis I. Ahlering, complain of Romanza Jerome Meyler and say that there is manifest error in the record in the above entitled cause and in the decision and judgment of the said Warren circuit court of the State of Kentucky, entered under the specific order and direction of the court of appeals of the State of Kentucky, in this, to wit:

First. For that in said decision and judgment it is held and adjudged that the superior court of the county of Vanderburg, in and

of the State of Indiana, being a superior court of general jurisdiction, did not acquire jurisdiction of the person of the defendant in error by the service of summons issued out of said court to the sheriff of Vanderburg county, Indiana, commanding the said defendant in error to appear and defend in said court in a suit pending in said superior court wherein plaintiffs in error were plaintiffs and said defendant in error was defendant, on him, the said defendant in error, the said defendant in error being at the time of such service afloat on the Ohio river to the south of low water mark on the Indiana bank between the eastern and western boundary lines of Vanderburg county, Indiana, and Henderson county, Kentucky, and that a judgment therein which was recovered in said superior court of the county of Vanderburg, of the State of Indiana, by the
119 plaintiffs in error against the defendant in error is void and of no effect, and thereby denied to and withheld from judicial proceedings of the State of Indiana the full faith and credit guaranteed in and by the Constitution of the United States, in each State to the public acts, records and judicial proceedings in every other State, contrary to the provisions of article IV, section 1, of the Constitution of the United States.

Second. For that in said decision and judgment it is held and adjudged that the superior court of the county of Vanderburg in and of the State of Indiana, being a superior court of general jurisdiction, did not acquire jurisdiction of the person of the defendant in error by the service of summons, issued out of said court to the sheriff of Vanderburg county, Indiana, commanding the said defendant in error to appear in said court in a suit pending in said superior court, wherein plaintiffs in error were plaintiffs and defendant in error was defendant, on the defendant in error, the said defendant in error being at the time of such service afloat on the Ohio river, to the south of low water mark on the Indiana bank, between the eastern and western boundary lines of Vanderburg county, Indiana, and Henderson county, Kentucky, and that the judgment recovered in said superior court of the county of Vanderburg of the State of Indiana, by the plaintiffs in error against the defendant in error, duly authenticated as required by act of Congress, was void and of no effect; and thereby denied to and withheld from the records and judicial proceedings of the State of Indiana, properly authenticated as provided by law, such faith and credit as they have by law and usage in the courts of the State of Indiana, in violation of section 905 of the Revised Statutes of the United States, and contrary to the provisions of article IV, section 1, of the Constitution of the United States.

Third. For that in said decision and judgment it is held and adjudged that the State of Indiana has no jurisdiction for the service of process on the Ohio river, between the Indiana and Kentucky banks, south of low water mark on the north bank of said river, in which decision and judgment is drawn in question the validity
120 of a statute of the Congress of the United States, entitled "An act declaring the consent of Congress that a new State be

formed within the jurisdiction of the Commonwealth of Virginia, and admitted into this Union, by the name of the State of Kentucky," approved February 4, 1791; and also the validity of an act of the General Assembly of the Commonwealth of Virginia, entitled "An act concerning the erection of the district of Kentucky into an independent State," approved December 18, 1789, referred to in said act of Congress, and such decision and judgment was against the validity of the said acts.

Fourth. For that in said decision and judgment it is held and adjudged that the State of Indiana has no jurisdiction for the service of process on the Ohio river between the Indiana and Kentucky banks, south of low water mark on the north bank of said river, in which decision and judgment is drawn in question an authority exercised under a statute of the Congress of the United States, entitled, "An act declaring the consent of Congress that a new State be formed within the jurisdiction of the Commonwealth of Virginia, and admitted into this Union, by the name of the State of Kentucky," approved February 4, 1791; and an authority exercised under an act of the General Assembly of the Commonwealth of Virginia, entitled, "An act concerning the erection of the district of Kentucky into an independent State," approved December 18, 1789, referred to in said act of Congress, and such decision and judgment was against the validity of the authority exercised under said acts.

Fifth. For that in said decision and judgment it is held and adjudged that the State of Indiana has no jurisdiction for the service of process on the Ohio river between the Indiana and Kentucky banks, south of low water mark on the north bank of said river, in which decision and judgment the title, right, privilege and immunity of the State of Indiana to serve civil process on the Ohio river between the said States was specially set apart and claimed by plaintiffs under the Constitution of the United States, and under a statute of the Congress of the United States, entitled, "An act declaring the consent of Congress that a new State be formed within
121 the jurisdiction of the Commonwealth of Virginia, and admitted into the Union, by the name of the State of Kentucky," approved February 4, 1791; and under an act of the General Assembly of the Commonwealth of Virginia, entitled, "An act concerning the erection of the district of Kentucky into an independant State," approved December 18, 1789, referred to in said act of Congress, and the said decision and judgment is against the title, right, privilege and immunity of the State of Indiana by its officers to serve process on the Ohio river between the Indiana and Kentucky banks south of low water mark on the north bank of said river so as aforesaid specialiy set apart and claimed by plaintiffs.

Sixth. For that in said decision and judgment it is held and adjudged that the State of Kentucky has exclusive jurisdiction over the Ohio river where said river forms the boundary between Kentucky and Indiana, and that by reason of this fact, the superior court of Vanderburg county, in and of the State of Indiana did not acquire jurisdiction of the person of the defendant in error by the

service of summons on said defendant in error, the said defendant in error being at the time of such service afloat on the surface of the Ohio river to the south of low water mark on the Indiana bank, between Vanderburg county, Indiana, and Henderson county, Kentucky, and thereby sustained the validity of a statute of the State of Kentucky entitled, "An act to ratify and confirm the adjustment of the boundary line between this State and the State of Tennessee, according to the articles of stipulation entered into by the commissioners appointed by both States," approved February 11, 1820, wherein and whereby the entire boundary of Kentucky is defined, and it is further provided that "the sovereign power and jurisdiction of the Commonwealth of Kentucky extends to and over the entire soil and waters within the limits described in the preceding section, except so far as she may have ceded jurisdiction to the United States for national purposes," which statute, as construed by said court, impairs the obligation of a contract entered into between the Commonwealth of Virginia and the district of Kentucky, by and with the consent of Congress, and accepted by the State of Kentucky, contained in an act of the General Assembly of
122 Virginia, entitled, "An act concerning the erection of the district of Kentucky into an independent State," approved December 18, 1789, and commonly known as the Virginia compact, contrary to the provisions of article I, section 10, of the Constitution of the United States.

For all of which reasons plaintiffs in error pray that said judgment may be in all things reversed and set aside.

CHARLES L. WEDDING,
LOUIS I. AHLERING,
Plaintiffs in Error,
By WILLIAM L. TAYLOR AND
MERRILL MOORES,
Attorneys for Plaintiffs in Error.

123 [Endorsed:] No. — Charles L. Wedding and Louis I. Ahlering *v.* Romanza Jerome Meyler Assignment of errors. William L. Taylor, attorney-general of Indiana, for plaintiffs in error.

124 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judge of the Warren circuit court of the Commonwealth of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Warren circuit court, before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles L. Wedding and Louis I. Ahlering, plaintiffs, and Romanza Jerome Meyler, defendant, wherein was drawn in question the validity of a

treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was
125 drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Charles L. Wedding and Louis I. Ahlering as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of Aug., in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

126 UNITED STATES OF AMERICA, *ss:*

To Romanza Jerome Meyler, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the Warren circuit court of the Commonwealth of Kentucky wherein Charles L. Wedding and Louis I. Ahlering are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable R. W. Peckham, associate justice of the

Supreme Court of the United States, this 25th day of Aug., in the year of our Lord one thousand nine hundred and two.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

127 On this 29 day of August, in the year of our Lord one thousand nine hundred and two, personally appeared W. H. Jones C. W. C. C. before me, the subscriber, W. B. Gaines and makes oath that he delivered a true copy of the within citation to Romanza Jerome Meyler.

W. B. GAINES.

Sworn to and subscribed the 29 day of August, A. D. 1902.

[Seal Warren Circuit Court, Kentucky.]

W. H. JONES,
Clerk of Warren Circuit Court of Kentucky.

Endorsed on cover: File No. 18,657. Kentucky, Warren circuit court. Term No. 125. Charles L. Wedding and Louis I. Ahlering, plaintiffs in error, *vs.* Romanza Jerome Meyler. Filed September 2, 1902.

FILE COPY.

11220

Office Supreme Court U. S.
FILED
DEC 19 1903
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1903.

CHARLES L. WEDDING AND LOUIS I. AHLERING,
Plaintiffs in Error,
v.
ROMANZA JEROME MEYLER.
No. 125.

IN ERROR TO THE WARREN CIRCUIT COURT OF THE STATE OF KENTUCKY.

STIPULATION.

It is hereby stipulated between plaintiffs in error, by Charles W. Miller, Merrill Moores and Cassius C. Hadley, their attorneys, and the defendant in error, by David W. Sanders, Esquire, his attorney, that inasmuch as certain portions of the record of the Court of Appeals of Kentucky in relation to the filing of a petition or petitions

for rehearing in said court, and the action of said court thereon, together with the concurring opinion handed down by Judge DuRelle, of the Court of Appeals of Kentucky, and the dissenting opinion of Judge Hobson, concurred in by Judge Burnam of said court, both of such opinions having been handed down after reargument, and on December 22, 1900, are omitted from the record certified to this court from the Warren Circuit Court of the state of Kentucky, and plaintiffs in error have applied for a writ of certiorari under rule fourteen to supply such omissions in said record; and inasmuch as all of such omitted portions of the record are substantially shown in the report of the opinions in this cause in said Court of Appeals, as officially reported in volume 107 of the Kentucky Reports, at pages 310-325, 685-704, and such opinions, as reported officially, have been literally copied and printed, and appear in the appendix to the brief for plaintiffs in error, filed in this case, at pages 3 to 37 inclusive, and the further printing of such record would produce unnecessary delay and useless expense, it is stipulated that no writ of certiorari upon the ground of diminution of the record issue herein, but that, in lieu thereof, the official report of this case, as reported in volume 107 of the Kentucky Reports including all of the opinions, and the reporter's statements and recitals in reference to said case, as shown by the said official report, and as copied and printed in the appendix to the brief of plaintiffs in error herein, shall be treated and considered as a part of the printed record in this case, and may be referred to by counsel or the court, if deemed necessary during the course

of the argument, or otherwise, pending disposition of the cause, and may be treated and considered in all respects as if originally included in the transcript and the printed record herein.

December 11, 1903.

Chas. W. Miller,

Merrill Moores,

Cassius C. Hadley,

Attorneys for Plaintiffs in Error.

S. W. Sanders

Attorney for Defendant in Error.

FILE COPY.

Office Supreme Court, U.S.
FILED
DEC 11 1903
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1903.

CHARLES L. WEDDING AND LOUIS I. AHLERING,
Plaintiffs in Error,
v.
ROMANZA JEROME MEYLER.

No. 125.

IN ERROR TO THE WARREN CIRCUIT COURT OF THE STATE OF KENTUCKY.

PETITION FOR WRIT OF CERTIORARI.

Come now the said Charles L. Wedding and Louis I. Ahlering by Charles W. Miller, Merrill Moores and Cassius C. Hadley, their counsel, and suggest diminution of the record in this cause in this, to wit:

1. That the petition and motion for a rehearing filed January 6, 1900, of record in the Court of Appeals of Kentucky is omitted from the transcript.

2. That the order of the Court of Appeals of Kentucky made March 10, 1900, ordering the case set for argument on petition for rehearing at the April term, 1900, is omitted from the transcript.

3. That the order of the Court of Appeals of Kentucky made June 12, 1900, that John W. Ray, Esquire, be permitted to represent the State of Kentucky in this case and the entry showing argument upon said petition for a rehearing on the same day by counsel for the State of Indiana and by John W. Ray, Esquire, for the State of Kentucky, and submission on the petition and motion for a rehearing is omitted from the record.

4. That the entry made December 22, 1900, upon the order book of the Court of Appeals of Kentucky showing what action was taken by said Court of Appeals on said petition and motion is omitted from the transcript.

5. That the concurring opinion of Judge DuRelle and the dissenting opinion of Judges Hobson and Burnam, rendered in said Court of Appeals December 22, 1900, and after the reargument, are omitted from said transcript.

Wherefore, the said Charles L. Wedding and Louis I. Ahlering move the honorable court, under rule fourteen, to award a writ of certiorari to be issued and directed to the Judges of the Court of Appeals of Kentucky commanding them that, searching the record and proceedings in said cause, they forthwith certify to this court those parts of the record so omitted as aforesaid.

Chas. C. Wedding.

Louis I. Ahlering.

Cassius C. Hadley.

December 9, 1903.

AFFIDAVIT.

Merrill Moores, being duly sworn, on his oath says that he has been of counsel for the plaintiffs in error herein continuously since the time of the filing of the petition for rehearing in the Kentucky Court of Appeals; and has had entire charge and management of such litigation since the allowance of the writ of error in this court; that the written transcript of the record of the Warren Circuit Court of the State of Kentucky was filed herein by affiant for plaintiffs in error September 2, 1902, but that the printed record was not prepared and filed until sometime in the summer of 1903; and that affiant first received a copy thereof during the month of September, 1903; that on the examination of said printed record affiant discovered for the first time that the petition for a rehearing filed in the Kentucky Court of Appeals January 6, 1900, on behalf of the plaintiffs in error, upon which a reargument was granted by the Court of Appeals of Kentucky, and all orders and entries of said court made in relation to said petition for a rehearing had been omitted from the record certified to this court and that the opinions in said cause handed down by Judge DuRelle, of the Court of Appeals of Kentucky, and the dissenting opinion of Judge Hobson, concurred in by Judge Burnam, of said court, all of said opinions having been handed down after a reargument, and on December 22, 1900, had been omitted from the record.

And affiant states that he is informed and believes that the reason for such omission was that said opinions and orders were never certified with the mandate of the said Court of Appeals to the Warren Circuit Court, and are not a part of the record of said Circuit Court, but are a part of the record of the Kentucky Court of Appeals.

And affiant states that in his opinion such parts of the record of the Kentucky Court of Appeals are properly a part of the record of said cause to be presented to this court, for the reason that they show that a federal question was presented to the Kentucky Court of Appeals upon which said court heard a reargument of the questions presented to it for decision, in which reargument the federal questions were fully presented to said court for its consideration.

Merrill Moores.

Subscribed and sworn to before me, Robert A. Brown, clerk of Supreme Court of Indiana, this 9th day of December, 1903.

Robert A Brown

Clerk of Supreme Court of Indiana.